IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 362

VINCENT FRANCIS McGEE, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

— *v* —

VINCENT FRANCIS McGEE, JR.

Defendant.

Docket Entries

Date	Proceedings
Feb. 29, 1968	Filed indictment.
Mar. 15, 1968	Pleads Not Guilty—released on own recognizance. 4/9/68 fixed as return date for motions. —WEINFELD, J.
May 28, 1968	Before PALMIERI, J.—Motions 1, Dismiss indictment, 2— Discovery and inspection, 3— Transcript of G.J. Test — Motions argued. Dec. Res.
June 13, 1968	Filed Memo Endorsed on Defts. notice of motion filed 4/11/68 to dismiss. The motion to dismiss the indictment is denied without prejudice to renewal before the trial judge. The motion for discovery is granted to the extent consented to by the Govt. See opinion dated 6/13/68, filed herewith.—PALMIERI, J. (mailed notice)
June 13, 1968	Filed Opinion #34890: Defts. motion to dismiss indictment is denied without prejudice to renew before the trial court. The motion for

discovery is granted only to the extent consented to by the Govt. So ordered. –PALMIERI, J. (mailed notice)

Nov. 8, 1968 – Before MURPHY, J. – Deft. and atty present –Jury Trial begun.

Nov. 12, 1968 – Trial continued.

Nov. 13, 1968 – Trial continued – Jury Verdict – Deft. found guilty on counts 1, 2, 3 & 4 as charged. Pre-sentence report ordered. Sentence set for 1/3/69. Deft. cont'd on own recognizance.

Jan. 16, 1969 – Filed judgment (atty present). It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on each of counts 1, 2, 3 & 4 to run concurrently with each other. Deft. continued on his own recognizance pending appeal.–MURPHY, J.

Jan. 16, 1969 – Issued commitment and copies.

Jan. 27, 1969 – Filed affdvt. for an order that deft. may proceed on appeal without being required to prepay fees etc. and endorsed – Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor– MURPHY, J.

Jan. 27, 1969 – Filed Notice of Appeal of the judgment entered in the action on the day of 1/16/69 to the U.S.C.A. (Mailed notice)

Jan. 29, 1969 – Filed notice of appeal from Judgment of 1/16/69 and endorsed leave to appeal in forma pauperis is granted (Mailed notice) –MURPHY, J.

May 7, 1969 – Filed record on appeal has been certified and transmitted to the U.S.C.A. 2nd circuit 5/7/69.

May 18, 1970 – Filed U.S.C.A. order for judgment, the judgment U.S.D.C. for S.D.N.Y. is hereby affirmed. (notice mailed) True copy, Clerk

July 30, 1970– Papers transmitted to the U.S.C.A.

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

— *v* —

VINCENT FRANCIS McGEE, JR.

Defendant.

COUNT 1

The Grand Jury charges:

On or about the 29th day of January, 1968, and up to and including the date of the filing of this indictment, in the Southern District of New York, VINCENT FRANCIS McGEE, JR., the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Military Selective Service Act of 1967, Title 50 Appendix, United States Code, Section 451 *et seq.*, and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, to whom an Order to Report For Induction had been mailed by his Selective Service System Local Board, unlawfully and knowingly did fail, neglect and refuse to submit to induction into the Armed Forces of the United States.

(Title 50 Appendix, United States Code,
Section 462(a); 32 CFR 1632.14)

COUNT 2

The Grand Jury Further charges:

On or about the 18th day of October, 1967, in the Southern District of New York, VINCENT FRANCIS McGEE, JR., the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Military Selective Service Act of 1967, Title 50 Appendix, United States Code, Section 451 *et seq.*, and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, to whom an Order to Report for a Physical Examination had been mailed by his Selective Service System Local Board, unlawfully and knowingly did fail, neglect and refuse to report for a physical examination at the Armed Forces Examining Station, 39 Whitehall Street, New York City, New York.

(Title 50 Appendix, United States Code, Section 462(a); 32 CFR 1628.16.)

COUNT 3

The Grand Jury charges:

On or about the 20th day of September, 1967, and up to and including the date of the filing of this indictment, in the Southern District of New York, VINCENT FRANCIS McGEE, JR., the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Military Selective Service Act of 1967, Title 50 Appendix, United States Code, Section 451 *et seq.*, and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, to whom a valid notice of classification (SSS Form 110) had been issued showing his current classification, unlawfully and knowingly did fail, neglect and refuse to have in his personal possession at all times, said valid notice of classification (SSS Form 110) which has been issued to him.

(Title 50 Appendix, United States Code,
Section 462(a); 32 CFR 1623.5)

COUNT 4

The Grand Jury charges:

On or about the 3rd day of July, 1967, and up to and including the date of the filing of this indictment, in the Southern District of New York, VINCENT FRANCIS McGEE, JR., the defendant, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Military Training and Service Act of 1967, Title 50 Appendix, United States Code, Section 451 *et seq.*, and the rules, regulations and directions made pursuant thereto, in that he, being a registrant, to whom a current information questionnaire (SSS Form 127) had been mailed by his Selective Service System Local Board requesting information concerning his mailing address, occupational, marital, family, dependency, and military status and physical condition and receipt of a professional degree, unlawfully and knowingly did fail, neglect and refuse to submit such information for which the local board had mailed him a request (SSS Form 127).

(Title 50 Appendix, United States Code,
Section 462(a); 32 CFR 1641.2(b); 32 CFR 1641.7(b))

OPINION OF JUDGE EDMUND L. PALMIERI DENYING MOTION TO DISMISS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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68 CR. 186

UNITED STATES OF AMERICA

–against–

VINCENT FRANCIS McGEE, JR.,

Defendant.

APPEARANCES

ROBERT M. MORGENTHAU, Esq.
United States Attorney for the
Southern District of New York
United States Courthouse – Foley Square
New York, N.Y. 10017

JOHN R. ROBINSON, Esq.
Assistant United States Attorney
Of Counsel

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200 Park Avenue
New York, N.Y. 10017
Attorneys for defendant

ROBERT S. CARLSON, Esq.
J. EDWARD MEYER, III, Esq.
Of Counsel

PALMIERI, J.

The defendant moves to dismiss a four count indictment charging him with violations of the Selective Service laws. The defendant has sworn in an affidavit filed in support of this motion that he is a full-time student in good standing at Union Theological Seminary which is "a recognized theological or divinity school," 50 App. U.S.C. § 456(g), and that the Government had full notice of these facts from his grand jury testimony and from various records in possession of his local draft board.

Count 1 of the indictment charges the defendant with refusal to submit to induction into the armed forces of the United States on or about January 29, 1968, in violation of the Military Selective Service Act of 1967 (the "Act") and Section 1632.14 of Volume 32 of the Code of Federal Regulations promulgated by the Selective Service System. Count 2 charges the defendant with refusing to report for a pre-induction physical examination on or about October 18, 1967. Count 3 charges defendant with failing, since September 20, 1967, to have had in his possession a notice of classification, Selective Service Form 110. Count 4 charges defendant with failing to fill out and return an information questionnaire (Selective Service Form 127), all allegedly in violation of various regulations promulgated by the Selective Service System.

The defendant registered with his local draft board at age eighteen, complied with the prescribed Selective Service System procedures, and was afforded a student deferment while he attended college. In July, 1967, defendant's board was notified by the University of Rochester that the defendant had graduated and no longer was in attendance there. Thereupon the board mailed defendant a current information questionnaire. He returned it unopened with a letter stating that he would henceforth return all correspondence from them un-

opened so as to "accept the obligation of patriotic confrontation with a system and program which I feel is beyond the high ideals of the United States and my personal conscientious commitment as a human being and as a Christian."

It appears to be conceded, at least for the purposes of this motion, that on April 15, 1967, the defendant burned his registration card(1) (Selective Service System Form 2), as well as his classification notice (Selective Service System Form 110), and wrote the President (enclosing the remnants) to the effect that despite his student deferment and prospective theological exemption from training and service he was compelled by his religious views to do what he had done "to sever every link with violence." At the time of these events the defendant was on notice, by letter dated March 22, 1966, from his local board that his prior claim that he was a conscientious objector would be considered when he no longer qualified for a student deferment. The defendant never renewed his application for conscientious objector status.

The defendant was reclassified 1-A in September, 1967, and when ordered to report for induction in January, 1968, he appeared and submitted to a physical examination, but refused to submit to induction because of his "moral and religious beliefs."(2) In his affidavit in support of the motion defendant has stated in part the following:

> My refusal to submit to induction on January 29, 1968 (Count 1 of the indictment) was based on the strongest dictates of conscience, and as such, cannot be held to have been a wilful and knowing criminal violation

(1) Such an act can constitute the basis for a criminal charge under 50 App. U.S.C. §462(b)(3). It is not alleged, however, in the indictment presented before the Court.

(2) This quote is taken from an induction center official.

of federal law. My conduct was a legitimate exercise of the First Amendment rights of freedom of religion and free speech against which the Government cannot show a prevailing interest. The action I took posed no threat to the public safety, peace or order. To have submitted to induction in the Armed Forces, on the other hand, would have struck down my deepest religious belief in reverence for life. A submission would have been a denial of the belief itself.

* * *

In the second, third and fourth counts of the indictment, I am charged with failure to report for a pre-induction physical on October 18, 1967, with failure to possess the reclassification notice mailed to me on September 20, 1967 and with failure to answer the Current Information Questionnaire mailed to me on July 3, 1967. Each of these charges should be dismissed for the same constitutional objections which I have raised in connection with Count 1. Each of the above actions and processes of my local draft board, as part of the total effort to compel my induction, violated my First Amendment rights of freedom of religion, speech and conscience and the Fifth Amendment guaranties of due process and equal protection of the laws.

In essence, defendant claims that he was punitively reclassified for protesting against the war in Viet Nam despite his application to be declared a conscientious objector. The defendant raises grave constitutional issues which it is "inexpedient to determine . . . upon a demurrer to a complaint or upon an equivalent motion, if there is a reasonable likelihood that the production of relevant evidence will make the answers to the questions clearer." *Bordens Farm Products v. Baldwin*, 293 U.S. 194, 213 (1934). Rule 12(b)(1) of the Federal Rules

of Criminal Procedure allows only those motions which can be determined without a trial of the general issue. A substantial portion of the defendant's position rests upon facts and inferences from facts which cannot be established except by the thorough and careful factual scrutiny which only a trial can afford. The papers before the Court at this time do not provide a sufficient basis for disposing of the constitutional problems posed by the defendant. Whether or not the defendant must be required to exhaust administrative remedies in this regard and whether his failure to exhaust them precludes him from making certain of the contentions in support of this branch of the motion are matters which can better be left to the *trial* court, in view of what has already been said. The impression is inescapable, however, that the defendant has made a deliberate choice to avoid pursuing his administrative remedies and insists upon a resolution of the issues without full recourse to the administrative processes.

The defendant also claims that whether or not he was punitively reclassified the indictment is insufficient because his 1-A classification is illegal, as he is exempt from military service as a full-time divinity student. 50 App. U.S.C. § 456(g). Defendant argues that this is a statutory exemption which may not be waived any more than one may waive one's sex or infancy. Section 456(g) provides:

> . . . [S]tudents preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theologial or divinity [7] schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been pre-enrolled, shall be exempt from training and service (but not from registration) under this title.

The Solicitor General of the United States made the following statement with respect to this exemption in a brief filed before the Supreme Court in the case of *Oestereich v. Selective Service System Local Board No. 11*, F.2d (10th Cir. 1968), *cert. granted* 36 U.S.L.W. 3437 (U.S. May 20, 1968):

> Petitioner is a full-time student in good standing at the Andover Newton Theological School, which is a "recognized theological or divinity school." Thus, he is exempt by the terms of the statute from "training and service" under the Selective Service Act. What Selective Service System Local Board No. 11 has done here is to terminate, by administrative action, the exemption which has been granted by statute. If that action was contrary to the express terms of the Act of Congress granting the exemption, this is obviously relevant in considering the application of the procedural provision on which the government has relied in this case.
>
> * * *
>
> Such a construction is not only possible here, but it is desirable in order to avoid conflict with the congressional determination to grant exemption to ministers and ministerial students. In this situation it may be observed that there is room for an appropriate distinction between an order which is contrary to the terms of a statute and an order which is subject to challenge only on the ground that the board has misapplied or abused its authority in making its judgment. Cf. *Harmon v. Brucker*, 355 U.S. 579, 581-582; *Leedom v. Kyne*, 358 U.S. 184, 188.
>
> * * *
>
> The Solicitor General submits these views for the consideration of the Court. It is his position that, in the light of facts in this particular case, and in the interest of

justice, the judgment below should be reversed, and the cause remanded with directions to hold a hearing as to the presence of the jurisdictional amount required by 28 U.S.C. 1331 and if jurisdiction under that section is found, to enter a decree in favor of petitioner on the basis of his acknowledged status as an exempt ministerial student.

In *Oestereich* the petitioner had been granted an exemption under § 456(g) as a divinity student. Thereafter he was delinquent in respect of performance of his duties under the Act and as a delinquent was reclassified 1-A. The thrust of the Solicitor General's statement is that despite the fact that the petitioner was delinquent in fulfilling his obligations under the Act he was entitled to an exemption from induction as a divinity student. A similar interpretation was adopted and the Solicitor General's statement followed in *Kimball v Selective Service Local Board No. 15*, 67 Civ. 4733 (S.D.N.Y. 1968), where the court enjoined the petitioner's draft board from inducting him when the board had changed his classification from a 2-S (student deferment) to a 1-A classification while he was still eligible for a student deferment but after he had become delinquent. The Government seeks to distinguish *Oestereich* and *Kimball* on the ground that in those cases the local board changed the individual's draft status after he had been accorded his statutory exemption, whereas here the reclassification of defendant as 1-A followed in the normal course of affairs after he lost his student deferment upon graduating from college.

The distinction the Government suggests is not persuasive. If a person is entitled to a statutory exemption it seems to matter little whether the local board first gives the exemption and then takes it away or whether it fails to grant it in the first place. If the defendant was, in fact, a full-time divinity student in good standing at or about the time the local board made its

classification decision, it would appear that despite his delinquency he would be exempt from military service under § 456(g).

Such a determination would not result in the wholesale failure of persons to comply with Selective Service regulations. Firstly, the rule would apply only when the board clearly acts contrary to an exemption from military service which has expressly been granted by statute. Secondly, one who has such an exemption is not immune from criminal prosecution for failing to follow the prescribed procedures under the Act and Selective Service System's regulations. The mere fact that one is exempt from military duty does not grant him a license to ignore the regulations of the Selective Service System. This entire litigation seems to be an example of the vice inherent in an individual's failure properly to follow the appropriate procedures. To have done so would have been little burden on the defendant. Nor is the charge of failure to keep his notice of classification in his possession deficient merely because petitioner may be exempt from military service. This requirement has recently been commented upon by the Supreme Court in *United States v. O'Brien*, 36 U.S.L.W. 4469 (U.S. May 27, 1968). The statutory purpose of requiring such certificates to be carried does not relate to whether an individual is or is not exempt from military service. See, *id.*

The Government contends that the defendant has waived any statutory right he may have had to exemption under § 456(g) because he failed to give proper notice to his board of his divinity student status, although in May, 1967, prior to his delinquency as charged in this indictment, he apparently told F.B.I. agents who were investigating his activities that he had been accepted by Union Theological Seminary and that he intended to register there as a full-time divinity student. Defendant's Selective Service file indicates that the agents gave an oral report of their conversation with defendant to the

board and it seems likely that the board acted with full knowledge of the facts. In support of its contention of waiver the Government cites *Pickens v. Cox*, 282 F.2d 784, 785 (10th Cir. 1960). In that case, however, the claim of statutory exemption as a "sole surviving son," §456(o), was made in an application for a writ of habeas corpus only after the petitioner, who had served in the army for over a year, had been sentenced to seven years in prison upon his court martial for being absent without leave and being disobedient to a superior officer. This is not the case here and *Pickens* is not a basis for a determination of waiver in light of the Solicitor General's statement in *Oestereich* and the *Kimball* case. It is to be remembered that "a legally untutored registrant should not be penalized for his failure to distinguish between [two agencies of the Selective Service System]." *United States v. Stafford*, 389 F.2d 215, 218 (2d Cir. 1968). For a discussion of the general operation of the Selective Service System see Note, 76 YALE L.J. 160 (1966); Comment 54 CALIF. L. REV. 2123 (1966). The defendant might well have believed that the agents who interviewed him would report the conversation to his board, as indeed they appear to have done.

Despite what has been said it would not be appropriate to dismiss counts 1 and 2 at this time. The defendant suggests—and he bears the burden of establishing his right to an exemption, Application of Kanas, 385 F.2d 506, 508 (2d Cir. 1967)—that it is clear that he is a divinity student in good standing at a recognized divinity school and therefore exempt. The Government, however, does not concede the defendant's entitlement to divinity student status under §456(g). It is to be noted that the fact that one is registered at a divinity school is not enough for one to qualify for the §456(g) exemption. There are, at least potentially, the questions of whether the defendant intends in good faith to become a priest, whether the defendant's studies are of a kind that an honest student for the

priesthood would pursue, and whether the defendant is satisfactorily pursuing his studies. See *United States ex rel. Levy v. Cain*, 149 F.2d 338, 341 (2d Cir. 1945). Unfortunately, in view of the fact that there is no stipulation as to the defendant's status at the seminary, the Court is not in a position at this time to resolve the elements which may be necessary or relevant to a determination of the defendant's draft status. Additionally, whether one is a divinity student within the meaning of the Act presents an issue which is not as readily determined as one's age or sex, nothwithstanding defendant's suggestion to the contrary.

The defendant has also moved for discovery and inspection "in furtherance of this motion to dismiss the indictment and for the preparation of [his] defense." This motion is granted only to the extent consented to by the Government.

The motion to dismiss the indictment is denied without prejudice to its renewal before the trial court. It is so ordered.

Dated: New York, N.Y.
June 13, 1968

EDMUND L. PALMIERI
U.S.D.J.

EXCERPTS FROM TESTIMONY

[14] UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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68 Cr. 186

UNITED STATES OF AMERICA,

– v –

VINCENT FRANCIS McGEE, JR.,

Defendant.

Before: HON. THOMAS F. MURPHY, D.J., and a Jury.

New York, November 8, 1968
10:30 o'clock a.m.

APPEARANCES

ROBERT M. MORGENTHAU, Esq., United States Attorney for the Government

By: JOHN R. ROBINSON, JR., Esq.,
Assistant United States Attorney

ROTH, CARLSON, KWIT & SPENGLER
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New York, New York 10017

By: ROBERT S. CARLSON, Esq.,
J. EDWARD MEYER, III, Esq., of counsel.

* * * *

[65]RICHARD P. CAREY, a witness called by Defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CARLSON:

[66] Q What is your profession, Mr. Carey?

A I am a special agent with the Federal Bureau of Investigation.

* * * *

[66] Q Did you place a telephone call to Mrs. Kenny of Local Board 15 on June 23, 1967?

A Yes, sir, I did.

Q Did you speak to Mrs. Kenny?

A I did.

Q Who was Mrs. Kenny?

A Mrs. Kenny is one of the employees at Local Board 15 in Manhattan.

Q Do you recall that conversation?

* * * *

[67] MR. CARLSON: I am asking for the conversation.

Q What you told Mrs. Kenny and what she said to you.

A The purpose of my calling was a matter of an official investigation, which was at the time being conducted by our office.

Do you want me to tell you the nature of that investigation?

Q No, I do not. I want you, to the best of your recollection, state the substance of your telephone conversation with Mrs. Kenny.

A I asked Mrs. Kenny if Vincent Francis McGee, Jr. was a registrant of Local Board 15.

She replied that he was.

I asked her to furnish me with his Selective Service number, his present classification, [68] his present address.

If I may, I will refer to a note that was made immediately after the call. May I, your Honor?

THE COURT: Is it agreeable, counsel?

MR. CARLSON: Yes, it is.

THE COURT: Yes.

A On May 19, 1967, Mrs. M. Kenny, clerk, Panel A, advised from the files of Local Board 15 that Vincent Francis McGee, Jr., Selective Service No. 50-15-43-359 was presently classified 2S due to his attendance at the University of Rochester.

She gave his birth date as August 18, 1943, and advised that he has never applied for duplicating registration or classification cards.

Her records showed his permanent residence address as 501 West 122nd Street, New York City, New York.

Q Did you tell Mrs. Kenny anything else, Mr. Carey?

A I was the one asking for the information. Mrs. Kenny furnished the information I just read to you in answer to the queries that [69] I put to her.

Q I will repeat the question.

Did you tell Mrs. Kenny anything else?

A At that time, no.

Q At any time?

A I have had three separate contacts with Local Board 15 in this matter.

Q Mrs. Kenny was your first contact?

A Mrs. Kenny was my first and second contact.

Q You spoke with her twice?

A I had spoken to her previously.

Q What was the date of the previous call?

A It would have been May 11th of 1967.

Q What did you tell her on that occasion?

A At that time I was making again inquiries concerning Mr. McGee as a possible registrant of her board. This was an inquiry that was being relayed by one of the other FBI offices through me to determine if this person was actually or could actually be in possession of legitimate Selective Service cards.

Q Was anything else said in that [70] telephone call of May 11th, 1967?

A No, there was not.

* * * *

[84] Q Did you ever tell Mrs. Kenny that Mr. McGee planned in the fall of 1967 to attend Union Theological Seminary in the fall?

THE COURT: Excuse me, I am going to ask you to represent to me that you have some evidence to support this question.

MR. CARLSON: I have some evidence, [71] your Honor, and I am prepared to adduce it, if necessary.

THE COURT: All right. Thank you.

A I will have to explain something to you, sir.

Q Please answer the question.

Did you or didn't you?

A Did I tell her?

Q Yes.

A That he was going to attend Union Theological?

Q Yes.

A No, sir, not in those words.

Q What words did you use, Mr. Carey?

A If there was a reference to Union Theological, I did not have any knowledge of Mr. McGee's intention to attend there.

Q What did you tell Mrs. Kenny, Mr. Carey? I am not interested in the state of your knowledge. What did you tell Mrs. Kenny?

A If I can recall specifically, in the conversation, which followed the verification that he was indeed a registrant, and that he had a 2S classification, I would have then in some way [72] made reference to a question on my part as to what would the classification be. Would it be different if a person, like Mr. McGee, were to attend Union Theological Seminary.

Q Did you tell her that you were told that Mr. McGee planned to attend Union Theological Seminary?

MR. ROBINSON: I object to further questions. I don't think it is relevant to the case whether he was or was not.

THE COURT: I will listen to the end of it. I didn't hear the question, I'm sorry.

Did you tell her that?

Q You were told that Mr. McGee was planning to attend Union Theological Seminary in the fall of 1967?

THE COURT: I think that was the question just asked a little while ago.

MR. CARLSON: Your Honor, the witness has not answered the question. He has told me what he would have said, what he might have said. I want to know what he said.

THE COURT: Didn't he tell us within a few seconds ago that he didn't tell her that the [73] defendant was going to Union Theological Seminary?

Did you say that?

THE WITNESS: To the best of my knowledge, I did not tell her anything. If anything, in my conversation with her there could have been in an offhand way of attempting to get information, since he had a 2S classification, would there be a difference in his classification if he were to transfer from, say, University of Rochester to Union Theological Seminary.

* * * *

[84] LAURENCE N. JONES, a witness called by the Defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. CARLSON:

Q By whom are you employed, sir?
A Union Theological Seminary.
Q What is your position at Union?
A Dean of Students and Admissions Officer.

* * * *

[85] Q Did there come a time when you met the defendant in this case, Vincent McGee?
A Yes.
Q When was that, sir?
A When he matriculated at Union in September 1967.

* * * *

[91] REDIRECT EXAMINATION BY MR. CARLSON:

Q Are there other Catholic students in attendance other than Mr. McGee?
A We have a number of Catholic students in attendance at Union, yes.
Q Are they candidates for the priesthood?
A A number of them have signified the intention of pursuing the priesthood, yes.

THE COURT: Anybody else?

RECROSS-EXAMINATION BY MR. ROBINSON:

Q Isn't it true that the majority of your students who are Catholics in your seminary [92] come from Catholic seminaries and attend certain courses at your seminary?
A There are several categories of students.

Q That is not my question, Doctor. My question was, isn't it true that most of the students who are Catholics in your seminary come from Catholic seminaries to take certain courses in your seminary?

A There are non-matriculating students, yes.

* * * *

[94] VINCENT FRANCIS McGEE, JR., the defendant herein, called as a witness in his own behalf, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MEYER:

* * * *

[107] Q Would you look at Government's Exhibit 16, which is called a Special Form for Conscientious Objectors; it is dated February 15, 1966, and tell us if that is the form you received back?

[108] A Yes, this is the form which I received and filled out and sent back to the Selective Service.

* * * *

[109] MR. MEYER: Your Honor, may I have permission to read several excerpts from this application?

THE COURT: Yes.

(Mr. Meyer read excerpts from the exhibit to the jury.)

* * * *

[118] Q Mr. McGee, will you describe the events which occurred after you had sent this letter to the President in the spring of 1967?

THE COURT: The events in the world?

[119] MR. MEYER: I am asking the events in relation to himself and again the Selective Service System.

A Well, after April 15 I went back—this event and the destruction of the card and the mailing of the letter had happened in New York, I went back to Rochester and I think it was about two or three weeks later I was called by the Federal Bureau of Investigation in Rochester and was informed over the telephone by an Agent Campbell, Dennis Campbell I believe was his name, that they had read in the Campus Newspaper of the University of Rochester that I had destroyed my draft card and mailed it to the President, and would I come down to their office and talk to them.

I did go down to their office and spoke with Agent Campbell and another FBI agent, whose name I think was John Kelly, and I spoke with them for about three hours and answered many questions about my motivations and my future plans.

I gave them three or four addresses where I would likely be in the fall, including [120] my parents' address in New York, and the dormitory address at Union Theological Seminary.

I remember that they took all these down and told them what my plans were for the summer.

* * * *

[122] Q In your conversation with the FBI Agents Kelly and Campbell, as you described, did you or did you not tell them that you were enrolled for the fall at Union Theological Seminary?

A Yes, I did. That was one of the addresses that I gave them.

THE COURT: The question was did you tell them that you were enrolled at the Union Theological Seminary?

THE WITNESS: Yes.

THE COURT: Yes, you say?

THE WITNESS: I think technically that is—I wasn't enrolled. I had been accepted for enrollment.

THE COURT: The question was that, but did you not tell us before that you gave them [123] the address of the Union Theological Seminary?

A I gave them the address, but I also—I did not tell I was enrolled.

THE COURT: No the answer is.

Q Did you tell them you had been accepted or made an application? What did you tell them about Union Theological Seminary?

A I told them I had been accepted for full time studies towards the Bachelor Divinity Degree to begin in, the studies to begin in September of 1967.

Q At Union Theological Seminary?

A That is correct, yes.

* * * *

[145] JEROME J. LANDE, called as a witness by defendant, being first duly sworn, testified as follows:

MR. MEYER: May I inquire, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION BY MR. MEYER:

Q Your name, sir, is Jerome Lande?

A That is right, sir.

Q Are you chairman of Local Board 15 of the Selective Service here in New York?

A Yes, sir.

* * * *

[156] Q Mr. Lande, I show you a copy of Government Exhibit 16 in this case, application for conscientious objector

by one Vincent McGee, and ask if you recall passing on that application.

MR. ROBINSON: Your Honor, may I suggest that the witness have the whole file in front of him?

MR. MEYER: Certainly.

MR. ROBINSON: So he can have a picture of what went on in this case.

MR. MEYER: Certainly, all he has to do is ask for it.

THE COURT: Do you need the file?

THE WITNESS: I recall passing on it, sir.

Q You recall passing on this in 1966, is that right? [157] A Yes.

Q What did you decide when you passed on this in 1966?

A To my memory, sir, I recall that there weren't sufficient facts in that to motivate me to grant the registrant the request he sought.

Q Namely, conscientious objector treatment, is that right?

A That's right.

Q Now, I would like to show you a letter, which is Government Exhibit 18, to the registrant from your board, which states:

"We wish to advise that your claim as conscientious objector will be considered when you no longer qualify for student classification."

A My answer, sir, referred to the time I received the applicant's application.

Q When did you receive his application?

A Whatever the date is stamped on that. I have no memory of it at the moment.

Q That date is stamped February 28, 1966, is that correct?

A I might not have seen it that day, but shortly thereafter. I don't make my office at [158] Selective Service, sir.

Q Did you instruct your clerk, B. Epstein, who signed this letter by your direction, to write that you had not considered

the application, but you were going to do so in the future as the letter states?

A I can answer that no.

Q What did you tell her to do? You just told us that you rejected the application?

A That's right, at that time, sir, because the young man was attending college and in my judgment he rated a 2S qualification which we proceeded to give him.

Q Now, Mr. Lande, you are changing your mind—

A I did not change my mind.

Q You said because of his beliefs?

A Sir?

Q I believe the record will show you said it was because of his belief that you—

A I cannot hear you.

Q I believe you said before that it was because of his beliefs that you failed to grant him a CO?

[159] A I did not say anything at all about his beliefs. You can refer to the record. I said in my opinion what he set forth did not motivate me to grant him the relief he sought.

Q Why was that again, Mr. Lande?

A Why was that again?

Q Yes.

A Because at that time reading his request in my consideration of it, sir, I came to the conclusion that he did not merit the relief he sought.

MR. ROBINSON: Your Honor, I think Mr. Lande has testified that Mr. McGee was a student at that time and therefore they gave him a 2S classification.

THE WITNESS: I did state that.

MR. MEYER: He didn't state that until he had seen the letter of March 23.

THE WITNESS: Oh, no.

Q Mr. Lande, did you make up your own mind on this matter?

A At that time, sure.

MR. ROBINSON: Your Honor, I object. There is no case law which supports any inquiry into what the draft board's mind was at the time of this [160] classification. The file was before the board and the purpose of the witness here today is to find out whether or not this classification in the CO form was considered before he was reclassified 1A in July.

THE COURT: The question was did you make up your mind. I don't see anything wrong with that question.

A I certainly did, sir.

Q Was it your own mind or was it always reviewed at some point by the draft board?

A At that time, not having seen the young man, it was my mind, sir.

Q Do you require to actually see a man?

A If a man comes in, the board will sit and listen to him, if he requests an appearance. Delighted to give it to him even though although sometimes they are not timely made.

Q Do you require a personal appearance in order to get a conscientious objector status?

A I do not, sir.

THE COURT: I am not too clear. When you say that you rejected the application for the CO, are you talking about you and the other members of the board or just you, yourself?

[161] THE WITNESS: Sir, the procedure is that when these forms come back ab initio, they are presented to the chairman for his consideration and his determination, and I so make it, sir.

THE COURT: So you made it as chairman of the board?

THE WITNESS: Correct, sir.

Q Did you ever review that decision of yours that you recall?

A I cannot remember, sir.

Q You don't remember ever reviewing it again?

A I cannot remember.

THE COURT: Try to keep your voice up. You have opposition outside and it is very hard.

Q I asked him whether he ever reviewed the decision he made in February 1966.

A I most likely did, but I cannot recall exactly.

MR. MEYER: He says he can't recall.

Q Is there anything that I could show you which might help you recall whether or not you ever reviewed that decision?

A I am sure there must be something in the [162] file. I would say that I did subsequently review it, yes.

Q What do you base that statement on?

A Because–

MR. ROBINSON: Can we make it clear whether or not the witness is requested to look at the file? He is testifying without the file.

MR. MEYER: All he has to do is ask for it, your Honor. He has total recall.

A I have reviewed it prior to sitting down here and talking and I recall that subsequently the young man finished his college or left college, I don't recall, and did not further merit a 2S deferment at which time, sir, based on nothing further in his file other than what we had already had in the file, we gave him a 1A classification. In doing that, sir, we again reviewed what appeared in the file.

* * * *

[163] Q Mr. Lande, I want to focus on this question again as to Form 150, the conscientious objector form, and ask you to tell us, yes, or if you can, whether there is something in the file that would show as a matter of record whether or not you, as chairman of the board, considered the CO application again for any reason?

A His original application?

Q Yes.

A I think I gave you my answer on that, Counselor.

Q What was?

A I repeated it to Judge Murphy just now. When these returns come in—

Q Wait a minute, wait a minute. Don't tell me about returns. I am asking about Vincent McGee—

THE COURT: Wait, you have to be more patient. You asked him for his reason and now he is allowed the widest, widest possible realm to explain his reason. It is a dangerous question, but you asked it.

A I will be more specific, Counselor.

[164] Q Thank you

A When Mr. McGee's return application came in asking for his deferment on the grounds of conscientious objector, sir, that was reviewed by me and read and carefully considered, as I consider all requests. And as I stated before, it was my considered judgment upon concluding the reading of it and my consideration that he did not rate the deferment.

* * * *

[164] Q Mr. Lande, am I correct in understanding that the decision with respect to this conscientious objector application was made, then, by you and not by the entire board?

THE COURT: Are you talking now about the original receipt of the application?

MR. MEYER: Yes, your Honor.

[165] THE COURT: Are you talking now about the original receipt of the application?

MR. MEYER: Yes, your Honor.

THE COURT: Or when they were told or learned that he no longer was in college.

MR. MEYER: The original receipt.

THE COURT: He said, as I recall it, that that was his decision.

Q Now, was the matter ever raised again?

A There was a review of his file when he concluded his schooling.

Q Who made that review?

A The board, as I recall.

Q When did they make the review?

A I don't recall.

Q What did they consider in making their review?

A The facts as they appeared in his file and his status at that time.

Q Mr. Lande, you are just answering that because that is what you do, isn't it? You don't have any specific recall about this case, do you?

MR. ROBINSON: I object. The file is before the Court.

THE COURT: Yes, it is argumentative.

A Of course it is. Sir, I have answered you to the best of my ability and truthfully. [166] Accept it or not as you see fit.

* * * *

[166] Q Can you tell us again what the basis was for reclassifiction of Vincent McGee as 1A in 1967?

A Sir, I believe he had been offered an alternative to the deferment he sought, which was a 1-O, hospital service. He did

not choose to avail himself of that. He was no longer in shcool and we had no alternative but to classify him 1A.

Q Would you show us someplace in the record where Mr. McGee, or tell us specifically from your recall, where Mr. McGee was ever offered 1-O, which is hospital service?

A I would have to see the file, sir.

* * * *

[167] (Pause.)

THE WITNESS: Counsel, it would appear from my review—

MR. ROBINSON: May we have the question read again that Mr. Meyer asked?

THE COURT: Do you forget it?

MR. ROBINSON: Yes, your Honor, I do.

THE COURT: I think it was, can you find something in the file which will refresh your recollection as to where it was or how it was that you offered the registrant 1-O classification.

MR. ROBINSON: Your Honor, I think that calls for the reasoning of the defendant. The internal processes of the basis of his decision and I object to the question.

MR. MEYER: Your Honor, it is admissible on the question of due process because they are telling us now—

THE COURT: Counsel, you have won. [168] I am going to let him answer.

Can you find anything, Mr. Lande?

THE WITNESS: Sir, of course it is a pretty thick file and I don't like to hold the Court and myself up. There was a letter written, which I find, I assume this is Government's 15, where we were advised that the young man would not accept a 1-O or inferred that he wouldn't.

Q Do you want to tell us what part of that letter you are referring to? This is the letter.

A Would you, sir? You asked me a question.

MR. MEYER: I would like the record to show that this is a letter from John Murray, a friend of the defendant's, to the local draft board accompanying the CO application.

A That's right. Reading from the second paragraph from the end about in the middle where it says:

"The writer in every case is certain that all of the convictions of the registrant are sincere and that if they are urged by him in support of an application to be classified 1-O, the writer urges that the sincerity and courage of the registrant [169] be respected and the application be approved."

Q Are you telling us, Mr. Lande, that because–

A Not because of that.

Q Let me finish the question. –because some friend of the defendant wrote and asked for a 1-O classification, that this man was given a 1-O classification, although nothing else in the record shows that fact?

A I didn't say it.

MR. ROBINSON: I think counsel is badgering the witness.

THE COURT: Not only that, but he is trying to scare him.

THE WITNESS: I don't scare easily, your Honor.

MR. MEYER: Your Honor, may I show you this letter?

THE COURT: Would you step back, please?

It is in evidence.

THE WITNESS: Sir, I did not say–I said what is in here in this letter from the alleged friend of the registrant–

[170] Q That is not the question I asked you, Mr. Lande.

A Even if you bang your hand twice it wouldn't change my testimony.

Q Answer the question if you can, sir.

A Don't bang your hand at me.

Q Can you tell us whether you gave the man a 1-O application and a 1-O classification, and if so, where it appears in the record?

A We did not give him a 1-O classification.

Q What did you tell us before then?

MR. ROBINSON: Your Honor, the government concedes he never got a 1-O classification.

* * * *

[171] Q Mr. Lande, I would like to ask you about the meeting of September 19, 1967, which Government Exhibit 3, which are your so-called minutes, reflects was the meeting at which you reclassified the defendant 1-A.

Do you recall that meeting?

A May I refer to Government 3, sir?

Q Please, sir.

A What was that date, sir?

THE COURT: December [sic] 19, 1967. That appears to be the date of the reclassification on the back of Exhibit 3.

A Yes, I have it, sir.

THE COURT: All right, he has it.

What is the question?

Q The question was, do you recall that particular reclassification at that meeting?

A Yes, sir.

[172] Q You do?

A Not in detail. I recall I was there and it would indicate I was there by the vote made, five to nothing. There are five members of the board. Of necessity I was one.

Q Is that why you say you were there because there was a five-nothing vote indicated?

A That's right, sir.

Q What were the names of the other draft board members who were there?

MR. ROBINSON: I object to that question. I don't think that is pertinent.

MR. MEYER: Your Honor, I believe it is relevant for two reasons.

THE COURT: But do you think he knows?

Do you know?

THE WITNESS: I can very well tell him that, sure. 1967 was only a year ago.

Arnold Boriss; Max Sclasinger; Francis McGuire–

Q Francis who?

A McGuire;–Saul Koenigsberg; and myself. I think that makes five, sir.

Q Can you tell us the circumstances of how [173] this matter of Vincent McGee on September 19, 1967 came before the board?

MR. ROBINSON: Your Honor, I think that is evidence from the record. Defense counsel can read that.

THE COURT: Do you recall, Mr. Lande?

THE WITNESS: To the best of my recollection, sir, at that time the registrant was no longer in school. Based on our previous determination that his request for conscientious objection status was denied, we had no alternative at that time but to give him a 1A, which we did.

Q You didn't consider the conscientious objector claim again because it had been denied previously?

A Yes –

MR. ROBINSON: The witness has already testified he did consider.

THE COURT: I don't know whether you think you are back in the old First Manhattan or not. You probably don't know where the First Manhattan was.

THE WITNESS: I remember very well, on Grand Street.

THE COURT: Come on, Counsel, please.

MR. MEYER: Could you read the answer back to me, please.

(Record read.)

Q It is important, Mr. Lande, I am sorry to reiterate—

MR. MEYER: Your Honor, I apologize to you, too.

Q I want to know when it was you denied the CO application that you just referred to?

MR. ROBINSON: Your Honor, I think the record reflects in Government's Exhibit 18.

A When it came in, sir.

Q When it came in in February?

A When I reviewed it shortly after the date stamped on it. I might have been there that day, I don't recall exactly, but it was within a short time thereafter.

Q Was it your practice or was it not your practice when you made a reclassification to look back through the record?

A It was my practice and is my practice.

Q Is it the board's practice?

A And it is the board's practice.

[175] Q Do you recall a letter from your review this morning or otherwise that this registrant wrote to the President of the United States?

A Yes, sir.

Q You recall considering at the time or do you just not have any recall? At the time I mean back in that meeting on September 19, 1967.

A I recall, sir, that we reviewed the record of the young man's case when we gave him the 1A and all pertinent information therein contained.

* * * * *

[175] Q Do you recall the statement in that letter, I am quoting:

"I have already been accepted for graduate study in a program where I would probably qualify for the theological deferment"?

A I know that I read it at that time, sir, and the statement, as you just quoted, is something the young man anticipated and we are constrained, sir, to classify the registrant based on his current status, not something in futuro.

Q The fact that a person has been accepted in a status is not good enough, is that it?

A That is a mere assertion of conclusion by a registrant is not sufficient, no.

Q Does this kind of a conclusion lead the board to make inquiries as to the status?

A The onus is on the registrant to supply us with a certificate from his proposed school to which he anticipates attending that he is a registered student there carrying whatever the course is and so forth. Upon receipt of that it is given full credence.

Q Mr. Lande, can you tell me—I may be ignorant of this—can you tell me where in the law the burden is put upon a registrant to give the local board a certificate from the school showing he is at school?

A We are not constrained to make a classification based on something that a registrant says will happen in the future.

* * * *

[181] CROSS EXAMINATION BY MR. ROBINSON:

* * * *

[182] Q May the record reflect I am handing the witness Government's Exhibit 3, which is the minutes of action for the witness to refer to.

Mr. Lande, is it your testimony that you considered the whole file or the board considered the whole file—is it your testimony that the board considered the whole file before it reclassified Mr. McGee 1A on September 19, 1967?

A That is correct, sir.

[183] VINCENT FRANCIS McGEE, JR., resumed.

MR. MEYER: Your Honor, I ended on [184] Friday.

THE COURT: Yes, Mr. Robinson.

CROSS-EXAMINATION BY MR. ROBINSON:

* * * *

[190] Q You are aware of the fact, then, that you could appeal your classification?

A I was aware of the fact that I could apply for a student classification.

Q Or any other classification?

A That I had to apply for one, that is correct.

Q Or any other classification you wished, is that correct?

A Yes.

* * * *

[207] THE COURT: He wants to know, didn't some of your witnesses say you are attending divinity school with regularity and pursuing a course in that seminary?

THE WITNESS: Yes.

Q You never made that claim to the draft board, isn't that correct, Mr. McGee?

A That claim is made in my letter of April 15 to the President and this was sent to the draft board.

Q You assume by some curious process of osmosis that the draft board could decipher from that letter that you are a divinity student, is that correct?

A Yes, of course. I also told that to the FBI and I also told that to you at a grand jury hearing before some of these charges came into effect and since you presented the charges to both grand juries, I am sure that knowledge was there on the table.

Q You were before the grand jury, were you not? [208] A The one in November of last year, yes, sir.

Q That did not concern this case, did it? It concerned the burning of your draft card, isn't that correct?

A Yes.

* * * *

[212] REDIRECT EXAMINATION BY MR. MEYER:

Q Mr. McGee, Mr. Robinson just asked you whether or not it isn't a fact that the grand jury investigation in November of 1967 concerned the burning of your draft card and not other matters.

A Yes.

* * * *

[214] Q Were you asked and did you give testimony before the grand jury in November 1967 regarding your divinity student status?

A Yes, I was. I indicated very clearly that I was a student at Union Theological Seminary and that this fit into my history that I was intending to go on to study for the ministry, the Roman Catholic priesthood.

[225] MR. CARLSON: Yes.

If your Honor please, the defendant at this time moves for a judgment of acquittal.

* * * *

[237] MR. CARLSON: The third ground of the motion—I will have two more grounds which I will dwell on briefly. The third ground is had on the failure of the board, I say, on the evidence before your Honor to reconsider defendant's application for conscientious objector on September 19, 1967. The board might have denied it; they might have granted it, but I say they at least should have considered it. That was their obligation under the law.

THE COURT: Don't you think that is the testimony of Mr. Lande?

MR. CARLSON: Yes, your Honor, I listened to it very carefully and I heard him say, if my notes are correct, that on September 19 he reviewed the whole file, but they classified this man 1A because they had rejected his conscientious objector application back in 1966.

That to me meant that they did not reconsider it.

[238] THE COURT: He said the whole board reviewed it, as I recall him saying it. They might have been wrong and if they were, there was an opportunity to appeal.

MR. CARLSON: With the latter comment I agree, your Honor. Our position is, if I am right on my recollection of the evidence, that they at least had to reconsider it at that point.

* * * *

[281] THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave will do so now or remain in their places until the completion of the Court's charge.

Marshal.

THE COURT:

* * * *

[287] In order to convict the defendant of the crime charged in Count 4, you must be satisfied [288] beyond a reasonable doubt of the following elements: (1) that the defendant was a registrant of Local Board 15 under the Military Selective Service Act of 1967; (2) that he was mailed by Local Board 15 a current information questionnaire requesting information concerning his mailing address, occupational, marital, family, dependency and military status and physical condition and the receipt of a professional degree; (3) that on or about the 3rd of July, 1967, he unlawfully and knowingly failed, neglected and refused to submit such information for which the local board had mailed him a request.

* * * *

[289] In order to find the defendant knowingly violated the duty to submit a current information questionnaire to his local board, you must find that he was aware of this duty and that he deliberately refused to do so.

* * * *

[300] THE COURT: I will deny those motions. You have an exception.

I think I should at this time, too, make certain findings. I find as a fact that the defendant at the present

time and at the time of his [301] refusal to be inducted was pursuing a full-time course of instructions in a recognized theological divinity school, namely, Union Theological Seminary here in Manhattan.

I do not find, however, that such a school was under the direction of a recognized church or religious organization, but rather it was, according to the testimony of the dean of students, a non-denominational seminary.

I also find as a fact that the draft board considered the defendant's application for a conscientious objector status and that was considered by the whole board on September 23.

Was that the date of the classification 1A, Mr. Robinson?

MR. ROBINSON: September 19, 1967.

THE COURT: September 19, 1967.

* * * *

EXHIBITS

Government's Exhibit 3

Classification Questionnaire
(SSS Form 100)

[See Opposite]

CLASSIFICATION QUESTIONNAIRE

Selective Service System
Local BOARD NO. 15
321 West 44th Street
New York 36, N. Y.

(Local Board Stamp)

RETURN THIS QUESTIONNAIRE ON OR BEFORE

Date of mailing 8-18-61

Date received back at local board

1. Name of Registrant (Last, First, Middle)	2. Selective Service No.	3. Date of Birth (Month, Day, Year)
Mc Gee, Vincent Francis Jr	50 15 43 37 9	Aug 16 1943

4. Mailing address: 501 W 122 St (Number and street or R.F.D. route) Apt 4D (City, town, or village) (Zone) (County) (State)

(The above items, except the date received back at local board, are to be filled in by the local board clerk before the questionnaire is mailed to the registrant.)

INSTRUCTIONS

You are required by law to fill out and return this questionnaire on or before the date shown in the box to the right above in order that your local board will have information to enable it to classify you. A notice of your classification will be mailed to you. When the questions in any series do not apply, enter "None" or "Does not apply." If you wish to submit additional information enter it on page 6.

After this questionnaire has been completed you are required to report to your local board, within 10 days after it occurs, any change of address, any change in marital or dependency status, any change in place of employment or occupation, or any other new fact which may affect your classification.

Fill out on typewriter or print in ink.

B. Peterson
Member or Clerk of local board

STATEMENTS OF THE REGISTRANT

Confidential as Prescribed in the Selective Service Regulations

Series I.—IDENTIFICATION D.O.B. AUG. 18, 1943

1. Name of Registrant (Last, First, Middle)	2. Place of Birth
McGEE, VINCENT FRANCIS F. (JR.) (MIDDLE)	AYRE, MASSACHUSETTS
3. Other names used	**4. Citizen or Subject of**
NONE	U.S.A.

5. Description

(a) Color Eyes	(b) Color Hair	(c) Weight	(d) Height	(e) Complexion
BLUE	BROWN	162	5' 11"	~~DARK~~ LT MED.

6. Present Address: 501 WEST 122 ST. APT. 40 (Number and street or R.F.D. route) NEW YORK (City, town, or village) 27 (Zone) N.Y. (County) N.Y. (State)

7. Telephone No. (If none, enter "None")	8. Social Security No. (If none, enter "None")
MO 62676	124-32-9921

9. Name and address of person other than a member of your household who will always know your address: MISS MARGARET M. COLLINS (Name) 501 W. 122 ST. N.Y. 27 (Address)

SSS Form No. 100 (Revised 5-26-60) Supplies of previous printings shall be used until exhausted.

GPO—15—75967-1—F

Series II.—MILITARY RECORD

1. If you are now on or have been separated from active military service enter (*a*) Armed Force NONE
   (*b*) Service Number..... (*c*) Date of entry.....
   (*d*) Date of separation..... (*e*) Type of separation.....
2. If you are now a member of a Reserve Component (Including the National Guard) give (*a*) Name and Address of Unit.....
   (*b*) Service Number..... (*c*) Date of enlistment or appointment.....
3. If you are now a member of a Reserve Officer Training Corps or any other officer procurement program, state the program, the Armed Force, and date of entry.....

Series III.—MARITAL STATUS AND DEPENDENTS

(Use Page 6, if necessary.)

1. (*a*) (check one) ☑ I have never been married; ☐ I am a widower; ☐ I am divorced; ☐ I am married.
   (*b*) I (check one) ☐ do ☐ do not live with my wife; if not, her address is.....
   .....
   (*c*) We were married at..... (Place) on..... (Date)
2. I have... (Number) children under 18 years of age of whom... (Number) live with me in my home.
3. The following other persons are wholly or partially dependent upon me for support.

Dependent	Relationship	Age	Approximate Income (Annual)	Amount Contributed by Me
Name Address			$	$
Name Address			$	$
Name Address			$	$
Name Address			$	$

If you are the father of an unborn child attach a statement from a physician showing the basis for his diagnosis and the expected date of birth.

Series IV.—REGISTRANT'S FAMILY

Listed below are all the living members of my immediate family over 18 years of age (except those shown in Series III) including my father, mother, brothers, sisters, father-in-law and mother-in-law. (Use Page 6, if necessary.)

	Relationship	Age	Estimated Ability to Contribute to Support of Claimed Dependents [1]
Name VINCENT F. McGEE SR Address 501 W. 122 ST. N.Y. 27	FATHER		
Name HELEN T. McGEE Address 501 W. 122 ST N.Y. 27	MOTHER		
Name GERALD J. McGEE Address 501 W 122 ST. N.Y. 27	BROTHER	18	
Name PATRICIA F. McGEE Address 501 W. 122 ST. N.Y. 27	SISTER	13	
Name KEVIN M. McGEE Address 501 W. 122 ST. N.Y. 27	BROTHER	8	
Name Address			

[1] Enter here your opinion as to whether the family member can or cannot contribute to the support of a particular claimed dependent, and to what extent.

C30—16—73367-1—F

Series V.—OCCUPATION

If Engaged in Agriculture, Also Fill in Series VI

1. The job I am now working at is (give full title, for example: construction draftsman, turret-lathe operator, stationary engineer, farm laborer, physics teacher, policeman, marriage-license clerk, etc.)

2. I do the following kind of work in my present job. (Be specific. Give a brief statement of your duties.)

UN EMPLOYED

3. My employer is .....
(Name of organization or proprietor, not foreman or supervisor enter "Self" if self-employed)

.....
(Address of place of employment—Street, or R.F.D. Route, City, and State)

whose business is .....
(Nature of business, service rendered, or chief product)

4. (*a*) I was employed by my present employer on .....
(Date)

(*b*) I entered the job described in items 1 and 2, this series, on .....
(Date)

(*c*) I am paid at the rate of $..... ☐ per hour ☐ day ☐ week ☐ month.

(*d*) I work an average of ..... hours per week.

5. Other business or work in which I am now engaged in is .....
(Nature of business, if none, enter "NONE")

6. Other occupational qualifications, including hobbies, I possess are .....

7. My prior work experience is .....

Series VI.—AGRICULTURAL OCCUPATION

1. I am (check one) ☐ Sole owner-operator of a farm ☐ Joint owner-operator with another ☐ Hired manager ☐ Cash tenant or renter ☐ Standing rent tenant ☐ Sharecropper ☐ Share tenant ☐ Wage hand (hired man) ☐ Unpaid family worker.

2. I have been engaged in farm work continuously since .....
(Date)

3. I (check one) ☐ am ☐ am not personally responsible for the operation of the farm where I work.

4. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	No. of Each Now on Farm

5. Principal products marketed during the last 2 years.....

6. Total value of products sold from this farm during the last crop year $.....

7. The number of year-round workers on this farm is ..... (Number) of whom ..... (Number) are hired hands.

8. Other farm experience .....

C80—16—73567-1—P

Series VII.—MINISTER OR STUDENT PREPARING FOR THE MINISTRY

1. I have been a minister of the ..... (Name of sect or denomination) since ..... (Month) (Day) (Year)
and I (check one) ☐ HAVE ☐ HAVE NOT been formally ordained.

2. I was formally ordained at .....
on (date) ..... by .....

3. I am a student preparing for the ministry at the CATHEDRAL COLLEGE OF ST. JOSEPH'S SEMINARY (Name and address of theological or divinity school)
555 WEST END AVENUE NY 24 under the direction of ROMAN CATHOLIC CHURCH (Name of church or religious organization)
.....

4. I am a student preparing for the ministry under the direction of ..... (Name of church or religious organization)
pursuing a full-time course of instruction at the ..... (Name and address of school)
leading to my entrance into ..... (Name and address of theological or divinity school)
in which I have been pre-enrolled.

Series VIII.—CONSCIENTIOUS OBJECTOR

(Do Not Sign This Series Unless You Claim Exemption as a Conscientious Objector)

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150).

..... (Signature)

Series IX.—EDUCATION

(Use Page 6, if necessary.)

1. (a) I have completed 8 years of Grade School, ... years of Junior High School, 4 years of High School, ... years of Trade or Business School. I (check one) ☒ DID ☐ DID NOT graduate from High School.
(b) In Trade or Business School I pursued courses in .....

2. (a) I have completed ..... years of College, majoring in .....
at ..... (Name and address of institution) and (check one) ☐ HAVE ☐ HAVE NOT received a degree.
(b) I have received the degree(s) of .....

3. I am a full-time student at CATHEDRAL COLLEGE OF ST. JOSEPH'S SEMINARY 555 West End Ave. N.Y.2 (Name and address of institution)
majoring in LIBERAL ARTS preparing for MINISTRY (Occupation or profession)
and expect to receive a degree on JUNE 1965 (Date)

Series X.—STATEMENT OF ALIEN

1. I was admitted to the United States for (check one) ☐ permanent ☐ temporary residence
on ..... (Date of entry)

2. My Alien Registration Receipt Card Number is .....
If you have not been admitted to the United States for permanent residence, enter on page 6 a supplemental statement setting out the date you first entered the United States, with the dates of each subsequent departure and reentry when applicable. Attach copies of documentary evidence in your possession verifying your claimed alien status.

C88—16—78967-1—1

Series XI.—PHYSICAL CONDITION

1. If you were ever rejected for service in the Armed Forces state (1) when ..... No .....
(2) where .....

2. If you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces, state the condition ..... No .....

3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each hospital or institution. ..... No .....

Series XII.—COURT RECORD

If you have been convicted of a crime or crimes other than minor traffic violations complete this series. If none enter "NONE."

Offense (other than minor traffic violations)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence
NONE			

2. I (check one) ☐ AM ☑ AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify ..... (Awaiting trial, on parole, etc.)

Series XIII.—SOLE SURVIVING SON

I (check one) ☐ AM ☑ AM NOT the sole surviving son of a family of which one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. You are required to make the registrant's certificate. 2. If you cannot read, the questions and your answers thereto shall be read to you by the person who assists you in completing this questionnaire. 3. If you are unable to sign your name, you shall make your mark in the space provided for your signature in the presence of a person who shall sign as witness.

NOTICE.—Imprisonment for not more than 5 years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended.)

I certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief.

Sept. 7, 1961 (Date) Registrant sign here → Vincent J. McKee, Jr. (Signature or mark of registrant)

..... (Date) ..... (Signature of witness to mark of registrant)

If anyone has assisted you in completing this questionnaire, such person shall sign the following statement: I have assisted the registrant herein named in preparation of this questionnaire because .....

..... (For example—registrant unable to read and write English, etc.)

..... (Signature of person who has assisted)

..... (No. and Street or P.O. Address)

Date ..... (City) (Zone) (State)

CSC—16—78667-1—9

Series XIV.—STATEMENT OF REGISTRANT

(Use additional sheets if desired)

(Signature of Registrant)

(Date)

CSS—16—75667-1—F

(Registrant Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President (Continued from Page 8)	Vote	
		Yes	No

(Registrant Will Make No Entries on This Page)

Dates	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote Yes	Vote No
9-15-61	#2 mailed - BB		
T-29-63	127 mailed BB		
8-6-63	127 rec'd with ltr re: school BB		
SEP 10 1963	Class 1-A BM Gr-3	3	0
9-11-63	#110 mailed - BB		
AUG 7 1964	Pre notice mld for 8-21-64 BB		
AUG 10 1964	Papers to station 9		
8-28-64	DD 67 rec'd - accepted. BB		
9-17-64	Ltr from registrant - Address noted - student	-	BB
9-17-64	Misc SSS #50 mailed BB		
10-1-64	#109 rec'd BB		
OCT 20 1964	Class 2-S BB	3	0
10-21-64	FORM 110 (NOTICE OF CLASSIFICATION) MAILED		
4-8-65	Recd. notification from reg. change of add. noted. RB		
SEP 20 1965	Cl. 1-A	4	0
SEP 21 1965	SSS FORM NO. 110 MAILED LB		
9-29-65	Ltr rec'd from Eastman Kodak BB		
9-30-65	#109 rec'd - Full-time, matriculated BB		
10-1-65	Ltr from registrant re: student status. BB		
10-19-65	Class 2-S BB	3	0
OCT 20 1965	SSS FORM NO. 110 MAILED		
2-14-66	Rec'd ltr from reg. advising he is Consc. Obj. CR		
2-15-66	Form 150 mld. for 2-25-66 CR		
2-28-66	#150 returned. Claims to be opposed to any service including Civilian work - BB		

(Continue on Page 7)

SELECTIVE SERVICE SYSTEM—CLASSIFICATION QUESTIONNAIRE
MINUTES OF ACTION—CONTINUED

NAME OF REGISTRANT: Joe [illegible] Vincent Francis Jr

SELECTIVE SERVICE NO.: 50 IT 43 319

Dates	Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President	Vote Yes	Vote No
3-17-66	#109 recd - Full-time grad circulates - 22		
MAR 22 1966	WD Reopening	4	0
3-23-66	Ltr mailed		
4-7-66	Change add. recd & noted		
7-13-66	Form #109 recd. Full time student ranked upper 3/4 of the male students in his class.		
7-18-66	Dup. form #109 recd. Upper 3/4		
9-21-66	Acknd ltr -		
9-29-66	#113 recd - Ltr in Ware J Roberts		
OCT 18 1966	Class 2-S	3	
OCT 19 1966	MAILED SSS FORM 110		
10-24-66	Mems mailed to Hdqtrs		
4-27-67	Rec'd copy of registrants letter to President, USA; dtd 4/15/67; reply SSS Wash.D.C.; and copy ltr from SSS Wash. D.C. to USATTY Wash., D.C. with SSS No. 90 - covering letter NYC HDQS.		
MAY 18 1967	WD Reopening	3	
5-19-67	#59 recd		
6-23-67	Refer to 119		
7/3/67	Form 109 recd: has graduated		
7/3/67	Form 127 sent to reg. for July 13, 1967		
7-14-67	Postcard - registrant traveling - will return 8/67		
7-25-67	Ltr from registrant - refuses to comply with SSL		
SEP 19 1967	Class 1-A	5	0
SEP 20 1967	FORM 110 MAILED #7717.		
9-26-67	#110 - 2A? will call - Refused physical & induction [illegible]		

To be used to provide additional pages of SSS Form No. 100 when more space is required for recording Minutes of Actions by Local Board, Appeal Board, and on Appeal to the President.

16—70641-1 U. S. GOVERNMENT PRINTING OFFICE

SSS Form No. 100-S (Revised 10-11-56)

SELECTIVE SERVICE SYSTEM
MINUTES OF ACTION—CONTINUATION SHEET

Approved not required.

NAME OF REGISTRANT OR STANDBY RESERVIST: Jr. Gil, Vincent F

SS OR SR NUMBER: 50 5 43 357

Dates	Minutes of Actions	Vote Yes	Vote No
OCT 4 1967	SSS FORM 223 MAILED FOR OCT 18 1967 Ck		
10-9-67	Local Order "Refused" returned 2B		
10-10-67	Papers to station		
10-31-67	Failed report Prem 10-18-67		
11-21-67	DECLARE DELINQUENT Failed to report for Pre-Exam 10-18-67 Date Delin		
11-25-67	#304 mld & signed 3rd		
11-28-67	Input, with card with notation returned to		
DEC 19 1967	PT Order to Delin Bd.		
1-11-68	INDUCTION NOTICE MAILED for Jan 29/68		
1-11-68	C.C. mld (252) to 501 Div Ad		
1-18-68	Papers to station		
1-26-68	Refer #119 - File submitted USA		
1-29-68	Delivery List Executed. Returned to Induction		
1-31-68	File returned with ltr - to report on 2-1-		
1-31-68	Copy ltr from AFEES Med - directed to U.S. Atty		
1/31/68	Reported on #301 to U.S. ATTORNEY		
1-31-68	File submitted U.S. Attorney		

To be used to provide additional pages of the Standby Reserve Questionnaire (SSS Form 80) or Classification Questionnaire (SSS Form 100) when more space is required for recording minutes of actions.

SSS Form 89 (12-20-61)

GPO 885-775

Government's Exhibit 15

Letter dated February 25, 1966 from John A. Murray to Local Board in support of application for conscientious objector status

[See Opposite]

WISER, SHAW, FREEMAN, VAN GRAAFEILAND, HARTER & SECREST

WILLIAM F. STRANG 1883-1960
CORNELIUS R. WRIGHT 1887-1966
EDWARD W. ICKES 1903-1966
WILLIAM C. COMBS
C. VINCENT WISER
JOHN G. SHAW
HYMAN B. FREEMAN
E. A. VAN GRAAFEILAND
DONALD R. HARTER
RICHARD B. SECREST
R. CLINTON EMERY
BRUCE E. HANSEN
HARRY M. GRACE
JOHN E. SHETT

800 POWERS BUILDING
16 MAIN STREET WEST ROCHESTER, NEW YORK 14614
TELEPHONE: 232-6500

DAVID D. DINAN
THOMAS P. MOONAN
THOMAS A. SOLBERG
JOHN M. LOFTUS
NATHAN J. ROSECOEL
WILLIAM A. NICELY
JOHN F. MAHON
ALAN ILLIG
JOHN E. BLYTH
JAMES A. ROBINSON
W. REYNOLDS SOMERS
PETER G. NASH
LAWRENCE S. PALMER
WILLIAM D. SMITH
ALAN F. HILFIKER
D. DYSON DAY
JOHN A. MURRAY
BARRY R. ARMTMAN

Selective Service System
LOCAL BOARD No. 15

FEB 28 1966

321 West 44th Street
New York, N.Y. 10036

February 25, 1966

Selective Service System
Local Board #15
321 West 44th Street
New York, New York 10036

Re: Vincent Francis McGee, Jr.
S.S. #50 15 43 359

Gentlemen:

This letter is written in support of the application filed, or to be filed, by the above registrant for classification I-O.

The writer has been acquainted with the registrant since 1963, having met him in shared activities of the Graduate Newman Club of Columbia University in New York City. The writer and registrant removed to the City of Rochester in the fall of 1964, and for a period of approximately one-half year, shared an apartment at #158 Manor Parkway in that city.

During that time, the writer formed of the registrant an opinion which has not altered to date, that the registrant is habitually fair, courageous, and temperate, with a degree of prudence extraordinary for a man of his youth. In addition, the writer is of the opinion that the personality of the registrant has been strongly influenced and formed by his associations with institutions and clergy of the Roman Catholic Church. These influences have affected the registrant from his earliest youth in New York City, forming his character and religious beliefs in the image of an enthusiastic, forward-looking and humanitarian zeal for the reformation and propagation of his religious faith.

The registrant is genuinely concerned to make his religious faith relevant, meaningful and effective within the liberal

93a

intellectual and social atmosphere of the city in which he has been raised. This concern has brought the registrant to convictions with respect to his duties toward his church and toward his country, some of which are outside of the current of the more common opinions of responsible persons. Some of these convictions the writer shares, particularly those in reference to his church. The writer in every case is certain that all of the convictions of the registrant are sincere, and that if they are urged by him in support of an application to be classified I-O, the writer urges that the sincerity and courage of the registrant be respected, and the application be approved.

Kindly forward all notices of classification or reclassification affecting the registrant on Selective Service Form #111 to the writer at the following address:

P.O. Box 3174, Federal Station
Rochester, New York 14614

Very truly yours,

John A. Murray

JAM:cma

cc: V.F. McGee, Jr.
1100 Genesee Street
Rochester, New York 14619

Government's Exhibit 16

Special Form for Conscientious Objector
(SSS Form 150)

[See Opposite]

VINCENT F. McGEE, JR.

February 24, 1966

ADDITIONAL CLAIM AND STATEMENT OF CONSCIENTIOUS OBJECTION

I, Vincent F. McGee, Jr., Selective Service No. 50 15 43 359, am, by reason of my religious training amd belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation/noncombatant training and service in the Armed Forces and further conscientiously opposed to obligatory compensatory service in civilian work contributing to the maintainance of the national health, safety or interest as the Selective Service System deems appropriate.

I, therefore, claim exemption from both combatant and noncombatant training and service in the Armed Forces and from obligatory compensatory service in such civilian work contributing to the maintainance of the national health, safety or interest as the Selective Service deems appropriate.

Vincent F. McGee Jr.

Selective Service System
LOCAL BOARD No. 15

FEB 28 1966

321 West 44th Street
New York, N.Y. 10036

LOCAL BOARD COPY

SELECTIVE SERVICE SYSTEM

FEB 28 1966

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

321 West 44th Street
New York, N.Y. 10036

Selective Service System
LOCAL BOARD NO. 15
321 West 44th Street
New York 36, New York
(Local Board Stamp)

THIS FORM MUST BE RETURNED ON OR BEFORE
FEB 25 1966
(Ten days after mailing or issue)

Date of mailing or issue FEB 15 1966
Date received back at local board 2-28-66

1. Name of Registrant			2. Selective Service No.
McGEE, JR.	Vincent	Francis	50 15 43 359
(Last)	(First)	(Middle)	

3. Mailing address: 1170 Genesee Street, Rochester, 14611, N.Y.
(Number and street or R.F.D. route) (City, town, or village) (Zone) (County) (State)

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The items in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided*, that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

Series I.—CLAIM FOR EXEMPTION *

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should strike out the statement in this series which he does not sign.

(A) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form, and I am

Neither A, nor B are acceptable to the undersigned Claimant.

(Signature of registrant)

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training and service in the Armed Forces. Therefore, I claim exemption from both combatant and noncombatant training and service in the Armed Forces.

(* See additional statement and disclaimer

Vincent F McGee Jr.

(Signature of registrant)

Under the provisions of section 6 (j) of the Universal Military Training and Service Act, as amended, any person who claims exemption from combatant training and service in the Armed Forces of the United States because he is, by reason of religious training and belief, conscientiously opposed to participation in war in any form and such claim is sustained by the local board, shall, if he is inducted into the Armed Forces, be assigned to noncombatant service as defined by the President, or shall, if found to be conscientiously opposed to participation in such noncombatant service, in lieu of induction, be ordered by his local board, subject to regulations prescribed by the President, to perform for a period of twenty-four consecutive months such civilian work contributing to the maintenance of the national health, safety, or interest as the local board deems appropriate, and any such person who fails or neglects to obey such order of the local board shall be subject to imprisonment for not more than five years or a fine of not more than $10,000, or to both such fine and imprisonment.

Series II.—RELIGIOUS TRAINING AND BELIEF

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Do you believe in a Supreme Being? ☒ Yes ☐ No

2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a Supreme Being involves duties which to you are superior to those arising from any human relation.

I believe in a personal Supreme Being to whom obligations to persons within limits of human relations are considered secondary. I believe further that participation in any form of military operation indicates an approval/consent situation repugnant to my belief in duties consequent to love and service of God and fellow man.

SSS Form No. 1 (Revised 1-1-62) 16-27000-1 [illegible]

2. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

My training and acquired belief derives from usual religious indoctrination and training in a Roman Catholic home in a religiously oriented one supported by instruction in Religious Classes and Secondary schools plus an deep personal commitment to a life of Christian witness in the world which derives from many personal relationships and wide reading, discussion and observation.

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

The Reverend Benedict Tighe, OSB.
Mount Saviour Monastery, Pine City, New York 14871

5. Under what circumstances, if any, do you believe in the use of force?

I believe in no use of force beyond the personal physical restraint - without any other means being used - of any individual bent on harming another person - where verbal and moral force of example have been exhausted.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

Early in my life I determined on a vocation to the religious life - one of service to men in a relationship to God and the expression of this love, I found in life. I spent 5½ years in an Marian Missionary Community (Cathedral College + H.S.) and resigned to live more closely associated with the concrete situations of modern man while keeping a stance of vocation and dedication to God and them clearly in sight. It is my intention to continue on to ordination.

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

Yes. Fall, 1965, Democrat + Chronicle, Rochester, NY - letters responding to an add calling attention to the Viet-Nam situation.
I took part in the March for Peace in Viet-Nam in Washington D.C. Nov. 25, 1965.
It is my custom to wear, frequently, in public areas, the Peace Symbol ☮, easily known to all which occasions frequent discussions, harassment, and concrete situations of witness to peaceful, moral argument as means to lasting and complete peace.

Series III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (public, church, military, commercial, etc.).

Name of School	Type of School	Location of School	Dates Attended From	Dates Attended To
CORPUS CHRISTI SCHOOL	CATHOLIC ELEM.	NEW YORK CITY	1945	1951
CATHEDRAL COLLEGE + PREP.	H.S. + JR. COLL. SEMINARY	NEW YORK CITY	1957	1963
HUNTER COLLEGE (EVENING)	COLLEGE - PUBLIC	NEW YORK CITY	1963	1964
UNIVERSITY OF ROCHESTER	PRIVATE COLLEGE	ROCHESTER, NEW YORK	1964	PRESENT
			19....	19....

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged, whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work	Name of Employer	Address of Employer	Period Worked From—	Period Worked To—
CAMP COUNSELLOR	CATHOLIC YOUTH ORGANIZ.	110 E. 23rd St., NYC, NY	Summer 1958	Summer 1959
LIBRARY WORK, ETC.	COLUMBIA UNIV.	N.Y.C. 10027	19.1960	19.1962
ERRANDS, DELIVERY	MORNINGSIDE DIST.	N.Y.C. 10027	19.1961	19.1962
RECEPTION, LABOR ETC.	CORPUS CHRISTI CHURCH	N.Y.C. 10027	19.57	19.62
OFFICE CLERK	[illegible]	119 W 57th St. NYC 10019	19.63	19.64
FACTORY	EASTMAN KODAK CO.	ROCHESTER, N.Y.	19.65	19.66

3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village	State or Foreign Country	Street Address or R. F. D. Route	Dates of Residence From—	To—
BOSTON, MASSACHUSETTS		FAYATTE STREET	19 43	19 44
NEW YORK CITY	NEW YORK	93 LA SALLE STREET	19 44	19 52
NEW YORK CITY	NEW YORK	501 WEST 122 STREET	19 52	19 64
ROCHESTER	NEW YORK	165 MINDER PKWY	19 64	19 65
ROCHESTER	NEW YORK	1170 GENESEE STREET	19 65	19 66
			19	19

4. Give the name and address of your parents and indicate whether they are living or not.

VINCENT F. AND HELEN T. MCGEE, 501 WEST 122nd STREET, NEW YORK, N.Y. 10027, BOTH LIVING.

5. (a) State the religious denomination or sect of your father ROMAN CATHOLIC

(b) State the religious denomination or sect of your mother ROMAN CATHOLIC

Series IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS.—Every item in this series must be completed. If more space is needed use extra sheets of paper.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

NO MEMBERSHIP

2. Are you a member of a religious sect or organization? ☒ Yes ☐ No. If your reply to item 2 is "yes," complete items (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

ROMAN CATHOLIC CHURCH, POPE PAUL VI, VATICAN CITY STATE, EUROPE

(b) When, where, and how did you become a member of said sect or organization?

BY BAPTISM, SEPTEMBER 19, 1943, ST. JAMES CHURCH, HARRISON AVENUE, BOSTON, MASSACHUSETTS

(c) State the name and location of the church, congregation, or meeting where you customarily attend.

NEWMAN CLUB, UNIVERSITY OF ROCHESTER, ROCHESTER, NEW YORK 14627

(d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

REV. L. JOHN HEDGES, NEWMAN CHAPLAIN (ROMAN CATHOLIC PRIEST), U. OF ROCH., ROCHESTER, NEW YORK 14627

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

The basic tenet of Roman Catholicism, in keeping with the life and message of Christ, is one of love. The primacy of love guides all action toward God or fellowmen. Various interpretations have always been favored in Roman Catholicism - with certain extreme views held strongly by many. At the same time, the Vatican Council in its statement on the role of the Church in the Modern World condemns war and arms and appeal to fraternal love as a ground between all men. Pope Paul makes clear, almost daily, the peace witness of Christ and His Church.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than those with religious, political, or labor organizations.

I was a member of the boy scouts for four or five years.

I am a member - and present Vice President of the Newman Club of the University of Rochester.

Over a longer period I have belonged and took part in a large number of religious discussion groups, conferences, Choirs etc.

Series V.—REFERENCES

INSTRUCTIONS.—This series must be completed. If more space is needed use extra sheets of paper.

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed conscientious objection to participation in war.

Name	Full Address	Occupation or Position	Relationship to You
Rev. Msgr. Robert F. Taylor	291 Jay St. Pulaski, N.Y.	Eastman Kodak Co.	Friends
Francis O'Gara	St. Joseph's Seminary, Yonkers, N.Y. 10704	Seminarian	Friend
Brother David Rast, OSB.	Mount Saviour, Pine City, N.Y. 14871	Monk	Friend
Rev. Sidney Wilkin	42 Huntington Pl. Rochester, N.Y.	—	Friend
V. Rev. James E. Reg	529 W 121 NYC 10027	Priest	Friend & Advisor

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—Every registrant claiming to be a conscientious objector shall make this certificate. If the registrant cannot read, the items and his replies thereto shall be read to him by the person who assists him in completing this form. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended).

I, VINCENT F. McGEE JR., certify that I am the registrant named and described in the foregoing statements in this form; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing ARE (are, are not) in my own handwriting.

Registrant sign here ☞ Vincent F McGee Jr.
(Signature or mark of registrant)

February 24, 1966
(Date)

(Signature of witness to mark of registrant)

(Date)

(Signature of witness to mark of registrant)

(Date)

Be it clearly noted that I waive no rights in respect to amplification of statements herein made and that I intend to submit such amplification in short order. I am aware of the requirements of the Selective Service in regard to time but request one week's time for submission of such longer statement of my belief concerning claim to conscientious objection herein made. Vincent F McGee Jr.

If another person has assisted the registrant in completing this form, such person shall sign the following statement:

I have assisted the registrant herein named in completing this form because

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Occupation of person who has assisted)

(Address of person who has assisted)

(Date)

(4) U.S. GOVERNMENT PRINTING OFFICE

Government's Exhibit 25

Letter dated April 26, 1967 from New York City Selective Service Headquarters enclosing defendant's letter to President

[See Opposite]

LOCAL BOARD NO. 15

APR 27 1967

321 West 44th Street
New York 36, N. Y.

NEW YORK CITY HEADQUARTERS
SELECTIVE SERVICE SYSTEM
205 EAST 42ND STREET
NEW YORK, N.Y. 10017

TO: Local Board 15 DATE: April 26, 1967

FROM: Chief, Legal Division FILE REF: 34:slr

SUBJECT(S): MCGEE, Vincent Francis
SS No.: 50 15 43 359

1. We are submitting herewith for appropriate disposition the enclosure(s) checked below pertaining to the subject individual(s):

( ) Cover Sheet (SSS Form No. 101) and contents
( ) Registration Card (SSS Form No. 1)
( ) Registration Certificate (SSS Form No. 2)
( ) Registration Questionnaire - Foreign (SSS Form No. 50)
( ) Classification Questionnaire (SSS Form No. 100)
( ) Verification of Criminal Record
( ) DD Forms 47, 62 and SF Forms 88,89 (Medical Registrant)
( ) Application for Change of Name (SSS-NYC Form 81)
( ) Recommendation of Scientific Advisory Committee of

2. Remarks: We are enclosing for the Local Board's information a copy of a letter which is self-explanatory dated April 15, 1967, from the registrant to the President.

Our National Headquarters has advised the Department of Justice regarding the mutilation of his Classification Card and his Registration Card as indicated in their letters to the registrant, copy of which is enclosed.

Any action that the Justice Department may bring about does not preclude the Local Board from reconsidering his classification for I-A, I-O, I-A-O etc, which he may be eligible for upon his graduation from college as he indicates in his letter is now approaching.

However, pursuant to 1642.4 it seems that the Local Board may now give consideration to declaring him delinquent for his failure to have in his possession his Registration Certificate (SSS Form 2). See Section 1617.1.

( ) Please acknowledge receipt on attached copy and return (If not checked "X", no receipt required).

FOR THE NEW YORK CITY DIRECTOR

Thomas R. Maher

THOMAS R. MAHER
Captain, AGC
Chief, Legal Division

SSS-NY City
Form No. 90
(January 1965)

99a

555

VINCENT P. McGEE, JR.

Con: Vietnam –
Eustace burned draft card –

P.O. Box 5642
The University of Rochester
Rochester, New York 14627
April 15, 1967

To the President of the United States of America

Dear Sir:

Enclosed you will find the remnants of that piece of paper symbolic of my tacit approval and consent to the military program of these United States of America.

Over one year ago, I petitioned my local draft board for classification as a conscientious objector to war and the use of arms or any form of violence in the conduct of human affairs. Action in my petition has been withheld on account of my present status as a student. To a degree not common as far as this status is concerned I have earned the student deferment through full-time employment while doing simultaneous full-time study and going deeply into personal debt. Beyond the present I have already been accepted for graduate study in a program where I would probably qualify for the theological deferment.

Thus, I feel as 'safe' as one could be from the fear of being drafted. Since my home is in an area of New York City where few are fortunate enough to get to College it is doubtful if I would ever in fact be drafted. However, my basic conviction is that life demands building and never destruction. Peace and freedom are to be won, but never with the force of violence.

The actuality of this country's activity around the world and especially in Vietnam has brought ever clearer into my convictions the fundamental belief that man must build and not destroy, love and not hate.

I am very much aware of the consequences of the deed done today, but find no other way in which to effectively protest what seems to be the decision of our government concerning the future. I cannot participate in this evil and must cry

100a

out against it.

In the name of all we hold dear, Mr. President, stop this destruction and violence.

Do not let this country follow others down the path of attempted world domination. I for one refuse to follow those who saw but were quiet in Germany before the Wars.

I chose to follow the words of the Pope at the United Nations, "War, never again." The only effective way to ensure this that I can see for myself personally is to sever every link with violence and war. Thus the symbolic destruction of a draft card, and non-cooperation with the military-industrial complex which seems to be dictating our international policy.

Respectfully submitted,

Vincent F. McGee, Jr.

The President of the United States
the White House
Washington, D.C.

Government's Exhibit 30

Current Information Questionnaire
(SSS Form 127)

[See Opposite]

Selective Service System
LOCAL BOARD No. 15
321 West 44th Street
New York, N.Y. 10036

(Local Board Stamp)

Selective Service System
LOCAL BOARD QUESTIONNAIRE RETURNED
JUL 27 1967
321 West 44th Street
New York, N.Y. 10036

Govt. Ex. 30

O:
Mr. Vincent Francis McGee, Jr.

Selective Service No.	Date of birth	Class
50 15 43 359	August 18 (Month) (Day)	2S

Date of Mailing July 3, 1967

COMPLETE AND RETURN BEFORE July 13, 1967

The law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have current information to enable it to classify you. When the questions in any series do not apply, enter "DOES NOT APPLY", or "NONE". You may attach any additional information you believe should be brought to the attention of the local board. After completing the statements be sure to date the form and sign your name. FILL OUT WITH TYPEWRITER, OR PRINT IN INK.

C. Kaplan
(Member or Clerk of Local Board)

STATEMENTS OF THE REGISTRANT

CONFIDENTIAL AS PRESCRIBED IN THE SELECTIVE SERVICE REGULATIONS

SERIES I.—MAILING ADDRESS

1. Name(s) and address(es) of persons(s) other than a member of your household who will always know your address _____

2. My current mailing address is _____
(ZIP code)

3. My telephone number (home or business) is _____

SERIES II.—MARITAL STATUS AND DEPENDENTS

1. (a) I (Check one) ☐ HAVE NEVER BEEN MARRIED ☐ AM A WIDOWER ☐ AM MARRIED ☐ AM DIVORCED

(b) I (Check one) ☐ DO ☐ DO NOT live with my wife; if not, her address is _____

(c) We were married at _____ (Place) on _____ (Date)

2. (a) I have the following children under 18 years of age who live with me in my home:
Name _____ Age _____ Name _____ Age _____
Name _____ Age _____ Name _____ Age _____

(b) If you have no child other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth.

3. I (Check one) ☐ DO ☐ DO NOT have dependents other than those listed above.

SERIES III.—MILITARY RECORD

1. If you are now on or have been separated from active military service enter (a) Armed Force _____
(b) Service number _____ (c) Date of entry _____
(d) Date of separation _____ (e) Type of separation _____

2. If you are now a member of a reserve component (including the National Guard) give (a) Name and address of unit _____
(b) Service number _____ (c) Date of enlistment, transfer, or appointment _____

3. If you are now a member of a Reserve Officer Training Corps or any other officer procurement program describe fully _____

SSS FORM NO. 127 (Revised 10-15-65)
(Previous printings may be used)

(CONTINUED ON REVERSE SIDE)

102a

1. I am now employed as a (give full title: for example, bricklayer, farmer, teacher, auto mechanic, steel worker. If not employed, so state) _____

2. I do the following kind of work. (Give a brief statement of your duties. Be specific) _____

3. My employer is _____
(Name of organization or proprietor, not foreman or supervisor; enter "Self" if self-employed)

_____
(Address of place of employment—Street, or R.F.D. Route, City, and State)

whose business is _____
(Nature of business, service rendered, or chief product)

4. I have been employed by my present employer since _____
(Month and year)

5. Other occupational qualifications, including hobbies, I possess are _____

6. I speak fluently the following foreign languages or dialects _____

7. I read and write well the following foreign languages or dialects _____

SERIES V.—EDUCATION

1. Grade or year completed (Line through all grades or years successfully completed) (Exclude trade or business schools)	Elementary and High School												College				Post Graduate				
	None	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	1	2	3	4	5

2. (a) I have completed ____ years of college, majoring in _____
at _____ and (check one) ☐ HAVE ☐ HAVE NOT
(Name and address of institution)
received a degree.

(b) I have received the degree(s) of _____

3. (a) I am a full-time student in (check one) ☐ High School ☐ College ☐ Business School
☐ Trade School _____
(Name and address of institution)
majoring in _____ preparing for _____
(Occupation or profession)
and expect to (check one) ☐ receive a degree ☐ finish course on _____
(Date)

(b) I will be a full-time student next semester at _____

SERIES VI.—COURT RECORD

1. If you have been convicted or adjudicated of a crime or crimes other than minor traffic violations complete this series. If none enter "NONE."

Offense (other than minor traffic violations)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence

2. I (Check one) ☐ AM ☐ AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify _____
(Awaiting trial, on parole, etc.)

SERIES VII.—PHYSICAL CONDITION

1. If you were ever rejected for service in the Armed Forces state (a) when _____
(b) where _____

2. If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition and attach a physicians' statement if not previously submitted.

_____

3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each _____

_____

SERIES VIII.—SOLE SURVIVING SON

I (Check one) ☐ AM ☐ AM NOT the sole surviving son of a family of which the father or one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

_____ _____
(Date) (Registrant's signature)

NOTICE.—Imprisonment for not more than 5 years or a fine of not more than $10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification.

U.S. GOVERNMENT PRINTING OFFICE: 1965 O—701-066

JUL 25 1967

321 West 44th Street
New York, N.Y. 10036

501 West 122nd Street
New York, New York 10027
July 23, 1967

Selective Service System
Local Board No. 15
321 West 44th Street
New York, New York 10036

Dear Sirs:

I have received SSS form # 127 mailed by your office on July 3rd and forwarded here by my family. As I explained by postal I have been on the road returning from the West Coast and this is the first opportunity I have had to attend to your questionnaire.

My receipt of your form SSS-N.Y. City # 59, dated May 19, 1967 clearly indicates (even though it is mimeographed form designed to answer numerous uses) that you are aware of my recent decision that I could no longer cooperate with the Selective Serivce System in any way because it is my considered decision that such cooperation is equal to tacit consent to the violence connected with the military program of The United States. No doubt this form letter was sent upon your receipt of a copy of the letter sent on April 25, 1967, by Mr. Daniel O. Omer, General Council of the National Headquarters of the Selective Service System. No doubt, also, you have a copy of my letter to the president dated April 15th, 1967.

I hereby return form # 127 as received and wish to tell you that further correspondence from your office will simply be returned unopened, consistent with my belief that cooperation is approval of actions and policy which in conscience I can have nothibg to do with.

It is my conviction that I do not aviod or dodge any obilgation as a citizen of the United States, but on the contrary accept the obligation of patriotic confrontation with a system and program which I feel is beyond the high ideals of the United States and my personal conscientious committment as a human being and as a Christian.

Sincerely yours,

Vincent F. McGee, Jr.

vm/
encl.

104a

Government's Exhibit 33

Order to Report for Physical Examination
(SSS Form 223)

[See Opposite]

SELECTIVE SERVICE SYSTEM — Approval Not Required.

ORDER TO REPORT FOR ARMED FORCES PHYSICAL EXAMINATION

Selective Service System
LOCAL BOARD NO. 15
321 West 44th Street
New York, N. Y. 10036
(LOCAL BOARD STAMP)

To Mr. Vincent Francis McGee
P.O. Box 5642 River Campus Station
Rochester, New York

October 4, 1967
(Date of mailing)

SELECTIVE SERVICE NO.			
50	15	43	359

You are hereby directed to present yourself for Armed Forces Physical Examination by reporting at:

ARMED FORCES EXAMINING STATION 39, WHITEHALL STREET, N.Y.C. Room 202
(Place of reporting)

on October 18, 1967 (Date) at 7:00 A.M. (Hour)

O. Kaplan
(Member or clerk of Local Board)

IMPORTANT NOTICE

(Read Each Paragraph Carefully)

TO ALL REGISTRANTS:

When you report pursuant to this order you will be forwarded to an Armed Forces Examining Station where it will be determined whether you are qualified for military service under current standards. Upon completion of your examination, you will be returned to the place of reporting designated above. It is possible that you may be retained at the Examining Station for more than 1 day for the purpose of further testing or for medical consultation. You will be furnished transportation, and meals and lodging when necessary, from the place of reporting designated above to the Examining Station and return. Following your examination your local board will mail you a statement issued by the commanding officer of the station showing whether you are qualified for military service under current standards.

If you are employed, you should inform your employer of this order and that the examination is merely to determine whether you are qualified for military service. To protect your right to return to your job, you must report for work as soon as possible after the completion of your examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF MARRIED, BRING PROOF OF YOUR MARRIAGE. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION, IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

If you are so far from your own Local Board that reporting in compliance with this Order will be a hardship and you desire to report to the Local Board in the area in which you are now located, take this Order and go immediately to that Local Board and make written request for transfer for examination.

TO CLASS I-A AND I-A-O REGISTRANTS:

If you fail to report for examination as directed, you may be declared delinquent and ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

TO CLASS I-O REGISTRANTS:

This examination is given for the purpose of determining whether you are qualified for military service. If you are found qualified, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety or interest. If you fail to report for or to submit to this examination, you will be subject to be ordered to perform civilian work in the same manner as if you had taken the examination and had been found qualified for military service.

SSS Form 223 (Revised 11-12-65) (Previous printings may be used until exhausted.) U.S. GOVERNMENT PRINTING OFFICE

EXHIBIT G.

Government's Exhibit 38

Letter dated January 29, 1968 from
Robert E. Gamache to Local Board

[See Opposite]

DEPARTMENT OF THE ARMY
ARMED FORCES EXAMINING AND ENTRANCE STATION
39 Whitehall Street, New York, New York 10004

BCD-EQ 29 January 1968

SUBJECT: Refusal of Induction (MC GEE, Vincent Jr., Francis)

TO: United States Attorney
Southern District of New York
U.S. Court House, Foley Square
New York, New York

1. Vincent Francis Mc Gee Jr, SSVC 50 15 43 359, 600 West 122nd Street, New York, New York, Room 515, Selective Service Registrant from Local Board No. 15, 321 West 44th Street, New York, New York, appeared at this station on 29 January 1968 to be inducted into the Army of the United States in accordance with the Military Selective Service Act of 1967, and found fully qualified for induction.

2. Mr. Mc Gee, a registrant for induction refused to take one step forward when his name was called by the Induction Officer, Major Robert M. Schmid, 075083. He was then informed that his refusal constituted a felony under the provisions of the Military Selective Service Act of 1967, and that conviction of such an offense under the provisions of civil proceedings would lsubject him to be punished by imprisonment for not more than five (5) years or a fine of not more than $10,000.00 or both. He was then informed again of the imminence of his induction under the specific language and his name was called by the Induction Officer. Mr. Mc Gee persisted in his refusal to be inducted and did not take one step forward. Registrant bases his refusal on his moral and religious beliefs. The refusal was witnessed by SP4 Robert Lunceford, RA 14964792 and SP4 Jose F. Ramirez, RA 12735552, now stationed at AFEES, 39 Whitehall Street, New York, New York.

3. Mr. Mc Gee did not desire to write and sign his own deposition.

FOR THE COMMANDER:

ROBERT E. CAMACHE
1st Lt, AGC
Asst Adjutant

cc: Dir of SS (City)
LB No, 15
Mr. Lebron
File

Selective Service System
LOCAL BOARD No. 15
JAN 31 1968
321 West 44th Street
New York, N.Y. 10036

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Government's Exhibit 39

Delinquent Registrant Report
(SSS Form 301)

[See Opposite]

SELECTIVE SERVICE SYSTEM

Budget Bureau Approval not required.

DELINQUENT REGISTRANT REPORT

Selective Service System
LOCAL BOARD NO. 15
321 West 44th Street
New York, N. Y. 10036
(Local Board Stamp)

January 31, 1968
(Date)

TO: Hon. Robert M. Morgenthau, United States Attorney.
U.S. COURT HOUSE, FOLEY SQUARE, NEW YORK, N.Y.
(Address)

1. IDENTIFICATION OF DELINQUENT:

Full name of delinquent:			Alias, if any:
MC GEE (Last)	VINCENT (First)	FRANCIS (Middle)	None

Last known address:	Last known telephone No.:
P.O. Box 5642 River Campus Station, Rochester New York (Number and street or R. F. D. route; City, town, or village; County; State; Zip Code)	MS 6-2676

Selective Service No.:	Social Security No.:	Selective Service classification:
50 15 43 359	124 32 9921	1-A

Color of eyes:	Color of hair:	Height:	Weight:	Other obvious physical characteristics:
Blue	brown	5/11"	152	Forehead & Birthmark center chest

Date of birth:			Place of birth:	
August (Month)	18 (Day)	1943 (Year)	Ayre (City, town, county)	MASS. (State or country)

Prior military service:

None (Armed Force)	(Service number)	(Date of entry)
(Name of last organization)		(Date of separation)

This delinquent has a court record as follows:

Offense	Date of Conviction (Month, day, year)	Court (Name and location)	Sentence
None			

2. OFFENSES:

This delinquent (check applicable box) ☐ failed to report for induction ☒ reported for induction but failed or refused to submit to induction into the Armed Forces pursuant to (check applicable box):

☒ Order to Report for Induction (SSS Form 252).
☐ Order for Transferred Man to Report for Induction (SSS Form 253).

The order indicated was mailed on January 12, 1968 (Date of mailing) to this delinquent at c/o 501 West 122nd St. N.Y.
P.O. Box 5642, Riv. Campus Sta. Rochester, N.Y. (Address) to report on Jan. 29, 1968 (Date)

In addition to failing to report for induction into the Armed Forces this delinquent has also failed to perform the following duties at the times indicated:

DUTIES	DATES
Failed to report Preinduction	Oct. 18, 1967

SSS Form 301 (Revised 10-6-64)

(OVER)

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3. EFFORTS MADE TO LOCATE DELINQUENT:

The delinquent has (Has, has not) been located on ..... (Date) at P.O. BOX 5642 River Campus Sta. Rochester, N (Address)

The person who will always know the delinquent's address is Miss Margaret Collins

501 W. 122nd St. N.Y. (Address) . This person has not (Has, has not) been contacted by

X X X (Letter, telephone, in person) on See Remarks (Date) with the following result .....

The delinquent's last known place of employment or business is Unemployed (Name)

..... (Address), ... (Telephone number). His employer ..... (Has, has not) been contacted by

..... (Letter, telephone, in person) on ..... (Date) with the following result .....

4. Mail directed to the delinquent Is (Is, is not) returned by the post office.

* INDUCTION ORDER NOT ISSUED

5. REMARKS: (Include additional efforts to locate delinquent or names of individuals who may know whereabouts of the delinquent.)

* File reviewed in light of Local Board Memorandum 14, Para. 9. New York City Director has authorized that the named registrant be reported for prosecution for Failure to Submit to Induction and his failure to maintain his current SSS Classification Card (SSS Form 110) issued in September 1967 placing him in Class 1-A.

Date of Registration: Sept. 7, 1961
Place: Man Group B, NYC

RECEIVED
SELECTIVE SERVICE SYSTEM
NEW YORK CITY HEADQUARTERS
FEB 1 1968
[illegible] 42nd Road

6. FUTURE INFORMATION:

You will be advised promptly by letter of any change in this delinquent's status and of any additional facts which may come to the attention of this board concerning his whereabouts or which may aid you in apprehending and prosecuting him.

B. J. [illegible]
(Member or clerk of local board)

This form shall be used to report to the United States Attorney those delinquents who fail to report for induction or who fail or refuse to submit to induction. Other deliquencies, if reported to the United States Attorney, shall be reported by letter.

This form shall be made out in quadruplicate. The original and two copies are forwarded to the State Director of Selective Service, who shall transmit the original and one copy to the United States Attorney for the judicial district in which the local board is located and retain one copy. One copy of the form shall be filed in the Cover Sheet (SSS Form 101) of the delinquent.

SP O 88 2-364

108a

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 177—September Term, 1969.

(Argued September 30, 1969 Decided March 31, 1970.)

Docket No. 33568

UNITED STATES OF AMERICA,

Appellee,

—against—

VINCENT FRANCIS McGEE, JR.,

Defendant-Appellant.

Before:

FRIENDLY, SMITH and FEINBERG,

Circuit Judges.

Appeal from a judgment of the District Court for the Southern District of New York, Thomas F. Murphy, *Judge,* convicting appellant, after a verdict, on a four-count indictment for violating 50 U.S.C. App. §462(a). Affirmed.

ALAN H. LEVINE, New York, N. Y. (Marvin M. Karpatkin, J. Edward Meyer, III, on the brief), *for Defendant-Appellant.*

ROSS SANDLER, Assistant United States Attorney (Robert M. Morgenthau, United States Attorney for the Southern District of New York, James D. Zirin, Assistant United States Attorney, on the brief), *for Appellee.*

FRIENDLY, *Circuit Judge*:

Vincent Francis McGee, Jr. appeals from a judgment of conviction for violating 50 U.S.C. App. §462(a), following a trial before Judge Murphy and a jury in the District Court for the Southern District of New York. McGee was convicted on all four counts of the indictment and was sentenced to imprisonment for two years on each count, the terms to run concurrently. The indictment charged him with refusing to submit to induction (Count 1), to report for a physical examination (Count 2), to possess a valid notice of classification (Count 3), and to submit information that his local board had requested (Count 4).

I.

McGee is a Roman Catholic who is currently a student at the Union Theological Seminary in New York City. He registered with Local Board 15 in Manhattan in August 1961, and informed the board a month later that he was "a student preparing for the ministry at the Cathedral College of St. Joseph's Seminary . . . under the direction of Roman Catholic Church." He took a leave of absence from the College in 1963, during which period his board classified him I-A. In August 1964, he passed the pre-induction physical that his board had ordered. A short time later, after enrolling in the University of Rochester, he was granted a II-S (student) deferment. He was temporarily reclassified I-A in September 1965, but his II-S classification was renewed shortly thereafter. In February 1966, while still classified II-S, McGee requested conscientious objector status, stating that it was his "intention to continue on to actual ordained Priesthood." The clerk of his board wrote him on March 23:

> This will advise that the recent evidence submitted, concerning your case has been reviewed by the Local Board. It is the decision of the Board that such evidence does not justify the reopening of your case and reconsideration of your present classification.
>
> However, we wish to advise that your claim as Conscientious Objector will be considered when you no longer qualify for a student classification.

McGee did not appeal this decision; he later requested and was granted a further II-S classification in October 1966.

In April 1967, while still classified II-S and enrolled in the University of Rochester, McGee wrote President Johnson, enclosing remnants of his torn and burnt draft card. This letter stated that even though he had "already been accepted for graduate study in a program where" he "would probably qualify for the theological deferment," he felt it necessary to "sever every link with violence and war" and to refuse to cooperate "with the military-industrial complex which seems to be dictating our international policy." McGee's local board received a copy of this letter, apparently considered reopening his classification and decided against it, and, in any event, did not change his II-S classification and deferment. Following McGee's graduation from the University of Rochester in June 1967, his board sent him a Current Information Questionnaire. McGee returned it unanswered, and in a covering letter announced that "further correspondence" from the draft board would "simply be returned unopened," consistent with his belief that "cooperation is approval." On September 19, 1967, almost two months after receipt of this letter by the local board, McGee was reclassified I-A. The Board mailed him a notice of classification and a letter clearly informing him that he had a right to ask for a per-

sonal appearance or an appeal within 30 days, that the board had a Government Appeal Agent to aid him "with a personal appearance, an appeal, or any other procedural right," and that the Appeal Agent or his representative would give him legal counsel on Selective Service matters at no charge. McGee returned this unopened, writing on the envelope

> Returned pursuant to previous
> declaration and notification.

McGee also returned unopened an order directing him to appear for a physical examination scheduled for October 18, 1967, and did not appear for it. He returned a delinquency notice sent on November 22, 1967. McGee did open his induction notice, which was sent on January 11, 1968, and did report for and pass a physical examination at the induction center. However, he refused to submit to induction.

Meanwhile, McGee had matriculated in the Union Theological Seminary as a full-time student on September 27, 1967. At no time did he request a IV-D (student for the ministry) classification from his draft board, but he claims that his letter to the President in April 1967, an interview with two FBI agents in May 1967, and testimony before a grand jury in November 1967, gave his board sufficient information to require classifying him IV-D. At trial, it was established that the Union Theological Seminary is non-denominational, and that McGee's parish priest recommended him to the Seminary. The chairman of McGee's draft board testified outside the presence of the jury that before McGee was classified I-A in September 1967, all pertinent information in his Selective Service file was reviewed. Judge Murphy found that the board considered and rejected appellant's conscientious objector claim.

McGee argues that his local board acted unlawfully in classifying him I-A in September 1967, when in his view he should have been classified IV-D or I-O. On that premise he claims that he cannot be convicted of refusing to submit to induction (Count 1) because his order to report for induction was illegal; that he cannot be convicted of refusing to report for a physical examination (Count 2) because if he had been properly classified, he would not have been called for a physical or, if called, could have waived the examination without penalty; and that he cannot be convicted of failing to possess a valid notice of classification (Count 3) because his I-A classification was invalid. He also argues that he cannot be convicted of failure to supply information to his local board (Count 4) because he substantially complied with its request and because any information not supplied was favorable to him.

II.

We shall deal first with McGee's claim that he was entitled to exemption from military service as a matter of law under 50 U.S.C. App. §456(g), which provides that:

> [S]tudents preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools . . . shall be exempt from training and service (but not from registration) under this title.

McGee contends that the statutory policy is so strong that the exemption may not be denied any registrant who meets the qualifications. He concedes that he did not request the exemption from his board, but claims that no such request

is required by the statute or regulations. In any event, he argues that the local board had sufficient knowledge of his qualification for the exemption to require its issuance.

It is true that section 456(g) is a mandatory provision in the sense that a draft board may not deny a IV-D exemption to one who qualifies for it. *Oestereich* v. *Selective Service System Local Board No. 11*, 393 U.S. 233 (1968).[1] However, it does not follow that a registrant may totally disregard the administrative procedures established by the Selective Service System, and rely on his own evaluation of his right to a IV-D classification in the hope that a court will subsequently support his interpretation. While *McKart* v. *United States*, 395 U.S. 185, 195 (1969), states that "[i]n Selective Service cases, the exhaustion doctrine must be tailored to fit the peculiarities of the administrative system Congress has created," it recognizes that the exhaustion doctrine may well be applicable to IV-D claims like McGee's, where the registrant is relying on facts never clearly presented—or indeed presented at all—to his local board.

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1 McGee attempts to bring his case within *Oestereich*, *supra*, on the further ground that he was denied IV-D and classified I-A as punishment for burning his draft card, writing to President Johnson, and refusing to cooperate with his local board. Apart from any other considerations, the record simply does not establish this contention. McGee wrote to the President, enclosing remnants of his draft card, in April 1967. His local board received a copy of this letter on April 27. However, appellant was not classified I-A until September 19, 1967, when his II-S deferment expired following his graduation from the University of Rochester. This was almost five months after the board was informed of the letter to the President and almost two months after McGee announced his intention to return board correspondence unopened. These are hardly the actions of a draft board that is acting lawlessly. Moreover, *Oestereich* is further distinguishable because appellant there sought redress through the Selective Service System and was unjustifiably deprived of a IV-D exemption which he had already obtained. McGee never applied for a IV-D classification and it is impossible to perceive how the local board could have punitively deprived him of an exemption he had never requested.

> Of course, it is necessary that the local board, which has the responsibility of classifying registrants in the first instance, be given the information necessary to perform its function. However, the present case does not present an instance where a registrant is trying to challenge a classification on the basis of facts not presented to the local board. In such a case, the smooth functioning of the system may well require that challenges to classifications based upon facts not properly presented to the board be barred.

395 U.S. at 198 n. 15.

McKart dealt with the proper interpretation of the "sole surviving son" exemption, 50 U.S.C. App. §456(o), which the Court found to be only a question of statutory interpretation and "certainly not a matter of discretion." *Id.* at 198. Accordingly, it refused to apply the exhaustion doctrine in that case because there was "simply no overwhelming need" to have the Selective Service System "resolve this question in the first instance, at least not where the administrative process is at an end and the registrant is faced with criminal prosecution." *Id.* at 199. McKart's claim was thus in sharp contrast to "classification questions which do involve expertise or the exercise of discretion, both by the local boards and the appeal boards." *Id.* at 198. Thus,

> Conscientious objector claims . . . or deferments for those engaged in activities deemed "necessary to the maintenance of the national health, safety, or interest" . . . would appear to be examples of questions requiring the application of expertise or the exercise of discretion. In such cases, the Selective Service System and the courts may have a stronger interest in having the

> question decided in the first instance by the local board and then by the appeal board, which considers the question anew.

Id. at 198 n. 16. In further distinguishing the earlier body of cases which did apply the exhaustion doctrine, the Court noted that:

> [T]hose cases all involved ministerial or conscientious objector claims, claims that may well have to be pursued through the administrative procedures provided by the Selective Service laws.

Id. at 201.

McGee's claim for a IV-D exemption here depended upon resolution of essentially factual issues which are by no means conceded. This distinguishes such cases as *McKart, supra,* where the facts were undisputed, and *Oestereich, supra,* where the board had already recognized the registrant's right to a IV-D classification.[2] Whatever the draft board's determination might have been had McGee applied to it for IV-D status and supplied it with full information, even the facts adduced *at trial,* as will be seen below, do not show that he was so clearly entitled to that exemption that the draft board could have arrived at but one conclusion. Accordingly, McGee's failure even to request a IV-D exemption from the local board or supply it with any supporting information is a sufficient ground for disposition of that claim.

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2 For other cases where the claim by a student to a IV-D classification raised factual issues, see *Eagles* v. *United States ex rel. Samuels,* 329 U.S. 304, 316-17 (1946) (nature of the seminary, motives of the registrant); *United States* v. *Bartelt,* 200 F.2d 385 (7 Cir. 1952) (whether registrant was full-time divinity student); *United States ex rel. Levy* v. *Cain,* 149 F.2d 338 (2 Cir. 1945) (nature of seminary and studies, registrant's intentions).

Beyond that it is plain that denial of a IV-D exemption to McGee would have had a "basis in fact." Under section 456(g), at least two requirements must be satisfied before a divinity student becomes entitled to a IV-D exemption: He must be a student preparing for the ministry under the direction of a recognized church or religious organization; and he must be satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school. As to the latter, it is clear that at the time McGee refused induction[3] he was a matriculated student at the Union Theological Seminary who was satisfactorily pursuing a full-time course of study. What is in dispute, however, is whether McGee was preparing for the ministry under the *direction* of a recognized church or religious organization. There is evidence in the record that McGee is a Catholic and that he intends ultimately to become a priest, but the evidence that he was studying under the direction of the Catholic Church when he refused induction is slim. His parish priest testified that he had recommended McGee to the Seminary, but that could have meant no more than that he thought McGee to be a serious and decent young man. The priest did not say he was in any way supervising McGee's course of study. According to the record, the divinity school in which McGee enrolled is non-denominational and may contain many students who have not formulated the intention of entering the ministry and are not under the direction of any church or religious organization. The record discloses that at least some of the Catholic students at the school come from Catholic seminaries to take courses there, but McGee did not. Indeed, McGee apparently had been a student at such a

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3 . We assume only for purposes of discussion that this is the key date, rather than some earlier time, e.g., date of reclassification by the board.

Catholic seminary, but left to go to Hunter College and then the University of Rochester, where he received a Bachelor of Science degree.[4] Accordingly, McGee's local board would not have had to conclude that he was "preparing for the ministry under the direction of" the Catholic Church. Perhaps the board would have granted the exemption had McGee made the claim directly to it; perhaps it would not. But we cannot say that if it had followed the latter course, there would have been "no basis in fact" for its action.[5]

III.

In contrast to his inaction with respect to the IV-D claim, McGee had squarely placed his I-O application before the local board when he requested and completed the Special Form for Conscientious Objector in February 1966.[6]

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4 While at the University of Rochester, McGee took some courses at Colgate Rochester Divinity School.

5 McGee claims that the trial judge incorrectly read into the statute a requirement that the divinity school itself be under the direction of a recognized church or religious organization in order that its students can qualify for a IV-D exemption. Such an interpretation of the statute would indeed be wrong since it is the student, not the school, to whom that language applies. However, we do not believe the trial judge thus misinterpreted section 456(g). Having found, correctly, that Union Theological Seminary is "a non-denominational seminary," he did not treat this as dispositive of the IV-D claim, but rather refused to treat proof of full-time attendance at a recognized non-denominational divinity school as alone supplying the other prerequisite for the exemption. In other words the finding indicated only that since Union Theological Seminary was non-denominational, the nature of the school could not of itself supply the missing element of "direction," as, for example, might be the case for a denominational seminary. We agree with that conclusion. *Cf. Eagles* v. *United States ex rel. Samuels*, 329 U.S. 304, 310, 316-17 (1946); *United States ex rel. Levy* v. *Cain*, 149 F.2d 338, 341 (2 Cir. 1945).

6 While McGee never protested the draft board's action, neither did he ever withdraw the application. The Government makes a fleeting argument that McGee "no longer desired a I-O deferment." If by this

He contends that there was no basis in fact for denying his conscientious objector claim and that his reclassification as I-A was thus unlawful.

We would be inclined to accept the first step in McGee's argument. In his Form 150 he expressed his belief "in a personal Supreme Being to whom obligation is superior when duties of human relations are considered," and said that "taking part in any form of military operation indicates an approval/consent situation repugnant . . . to love and service of God and fellow man." These and other statements, if sincere, established that he, "by reason of religious training and belief, is conscientiously opposed to participation in war in any form." 50 U.S.C. App. §456(j). Neither his prior nor his subsequent actions were inconsistent with his assertions, see *United States* v. *Haughton*, 413 F.2d 736, 742 (9 Cir. 1969), and we see nothing in McGee's file—all that was before the board—that could reasonably put his sincerity in issue. This is particularly significant in light of the board chairman's testimony that McGee's local board did not require an interview for conscientious objector applicants, although it undoubtedly could have.[7]

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is meant that McGee had withdrawn his request for I-O, it is incorrect, as the Board was never so notified. Selective Service procedures then and now in force make clear that such a claim would have had to be withdrawn in writing. Local Board Memorandum No. 41, as amended, August 15, 1952, reported in Selective Service Law Reporter ("S.S.L.R.") 2174 (including amendments of July 30, 1968, which are not here relevant). Moreover, McGee's letter to his board, dated July 23, 1967, in which he announced his policy of non-cooperation, restates his "personal conscientious commitment."

7 The Selective Service System currently advises a local board that if it determines that it cannot grant the I-A-O or I-O classification claimed, the local board should invite or request the registrant to meet with it for an interview prior to classification. The primary purpose of the interview will be to develop further facts on which the conscientious objector claim is based, and the sincerity of such

While in this case we have the benefit of the testimony of the chairman of the local board, that does not reveal any "basis in fact" for denying McGee's application. As indicated, the statement of beliefs in his Form 150 would seem to meet the statutory test, and what little testimony there is by the board chairman concerning McGee's sincerity would, if anything, support a conclusion that the local board thought McGee was sincere. He testified that McGee "had been offered an alternative to the deferment he sought, which was a 1-O, hospital service. He did not choose to avail himself of that." He further testified that "[t]here was a letter written . . . where we were advised that the young man would not accept a 1-O or inferred that he wouldn't." This testimony was inaccurate. The letter referred to was by John A. Murray, dated February 1966; far from indicating that McGee would not accept a I-O, it was in support of his application.[8]

Acceptance of so much of McGee's argument still does not lead to his conclusion unless he is to be excused from failure to appeal his I-A classification. We see no reason for doing so. To the passages from *McKart* already quoted, we add another, 395 U.S. at 200:

> [T]oday's holding does not apply to every registrant who fails to take advantage of the administrative

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claim. This interview does not take the place of the personal appearance which the registrant may request under Section 1624.1, after the classification action.

Local Board Memorandum No. 41, as amended July 30, 1968, *supra* note 6.

8 What the chairman of the board may have meant was that McGee's application for I-O indicated that even if he were granted such a I-O, he would not report for alternative civilian service, as required under the Act. However, this eventuality never came to pass. In any event, on this record we would not regard McGee's statement that he would not accept alternate service as a "basis in fact" for denying a I-O classification.

remedies provided by the Selective Service System. For, as we have said, many classifications require exercise of discretion or application of expertise; in these cases, it may be proper to require a registrant to carry his case through the administrative process before he comes into court.

Mr. Justice Marshall listed four factors that ordinarily justify application of the exhaustion doctrine to bar a defendant from challenging a local board's classification: (1) "judicial review may be hindered by the failure of the litigant to allow the agency to make a factual record, or to exercise its discretion or apply its expertise"; (2) judicial efficiency may be furthered because a "complaining party may be successful in vindicating his rights in the administrative process"; (3) notions of administrative autonomy require that the agency be given a chance to discover and correct its own errors"; and (4) "it is possible that frequent and deliberate flouting of administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures." 395 U.S. at 194-95. All the last three factors are present here. An appeal might well have led to McGee's obtaining a I-O classification and have avoided the judicial—and prosecutorial—effort that his flouting of the processes of the Selective Service System has caused. The System should have been given an opportunity to correct the error of the local board. And sanctioning McGee's deliberate refusal to avail himself of procedures which the Government had made available to him would encourage others to do so, especially in cases where the chances of success in court seem good.

On all this we find ourselves in agreement with the sensitive opinion of Judge Goodrich and in disagreement

with the able dissent of Judge Maris in a case strikingly similar to McGee's, *United States* v. *Palmer*, 223 F.2d 893 (3 Cir.), *cert. denied*, 350 U.S. 873 (1955). We agree also with the decision of another court of appeals, made in the light of *McKart*, which refused to excuse failure to appeal the revocation of a hardship deferment, *United States* v. *Powers*, 413 F.2d 834 (1 Cir. 1969).[9] The entire subject has just been exhaustively canvassed by the Ninth Circuit in *Lockhart* v. *United States*, decided December 18, 1969, 2 SSLR 3432, and we agree with Judge Ely's opinion for a majority of the court *in banc*. Moreover, the position taken by the two dissenting judges supports "forfeiture of judicial review" for failure to exhaust "when the registrant has deliberately sought to subvert and evade the administrative process," the situation here, as distinguished from a case where the "default was merely inadvertent or negligent."

Our brother Feinberg argues for a different result on the basis that the board "never passed on" the conscientious objector claim. We do not read the record that way. The board chairman, called as a defense witness at the trial in November 1968, said that when the McGee conscientious objector application was filed in 1966, he thought "there weren't sufficient facts . . . to motivate me to grant the registrant the request he sought" and that "what he set forth did not motivate me to grant him the relief he sought." He denied instructing the clerk to write that the conscientious objection claim had not been considered—a point on which the letter was ambiguous. He stated also that when the board gave McGee a I-A classification in 1967, "we again reviewed what appeared in the file," that

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9 So far as we have been able to determine, *United States* v. *McNeil*, 401 F.2d 527 (4 Cir. 1968), vacated and remanded for further consideration in the light of *McKart*, 395 U.S. 463 (1969), has not been again decided.

"we reviewed the record of the young man's case when we gave him the I-A and all pertinent information therein contained," and that "the board considered the whole file before it reclassified Mr. McGee I-A on September 19, 1967." While the chairman also testified that "based on our previous determination that his request for conscientious objection status was denied, we had no alternative at that time but to give him a I-A," we read this as meaning only that the chairman remembered the Board's dissatisfaction with McGee's showing when his application was examined in early 1966 and that the Board saw no reason to change their minds eighteen months later. Judge Murphy, who saw and heard the witness, found "as a fact that the draft board considered the defendant's application for a conscientious objector status and that was considered by the whole board on September 23." We do not see how this finding can be regarded as "clearly erroneous."

However, even if there had been an inadvertent failure to consider the conscientious objection claim in September 1967, as the dissent assumes, we would reach the same conclusion. This is precisely the kind of thing that a personal appearance or a conference with the Appeal Agent, which McGee was invited to have in the letter he returned unopened, would have been almost certain to reveal, with the result that the board would have passed on the merits of McGee's claim. Quite possibly it would have acted favorably; if it had not, the error would very likely have been corrected on appeal.[10] Despite their name, appeal boards do not perform simply a reviewing function. "It is universally held that the Appeal Board considers matters

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10 Communication between the appeal board and the local board could well have developed the true facts.

of classification *de novo* and its classification is one of first instance, not a mere affirmance or reversal of the Local Board, and that any such prejudice on the local level is cured by a fair consideration on the appeal," *De Remer* v. *United States*, 340 F.2d 712, 719 (8 Cir. 1965) (citing cases). See 32 C.F.R. §1626.26; *McKart* v. *United States*, *supra*, 395 U.S. at 198 n. 16; *Storey* v. *United States*, 370 F.2d 255, 260 (9 Cir. 1966) (citing cases); *Clay* v. *United States*, 397 F.2d 901, 912-13 (5 Cir. 1968), *vacated and remanded on other grounds*, 394 U.S. 310 (1969); Note, *The Selective Service*, 76 Yale L.J. 160, 171 (1966). As already indicated, the fact that McGee had a good factual case for appeal in no way points against insistence on his taking one; a case of statutory construction like *McKart* differs since on such a matter there is a positive advantage in resort to the courts which alone can decide the issue authoritatively and uniformly for the benefit of all registrants. Instead McGee's stiff-necked refusal to have any dealings with the Selective Service System has caused the expenditure of countless hours by prosecutors, grand and petit jurors, and judges of the trial and appellate courts. If we were free to look at his case alone, we might still be tempted to take the charitable view of our dissenting brother. But if we should do that in McGee's case, we would be obliged to do it in every other similar one. Of course it seems "harsh" when the exhaustion requirement results in a conviction for refusal to submit to induction by a registrant with a seemingly good claim for exemption. But one of the main points of the exhaustion doctrine is to relieve the courts from having to consider claims that ought to be dealt with in the first instance by administrative agencies; it canot properly be limited to those persons whose claims would fail in court anyway.

While there are exceptions to the rule requiring a conscientious objector to appeal from a denial of his claim, none comes close to this case. Claimants are not required to exhaust administrative remedies in order to attack the constitutionality of the statute, *United States* v. *Sisson*, 294 F. Supp. 520 (D. Mass. 1968) (Wyzanski, *J.*), *probable jurisdiction noted*, —— U.S. —— (1969), or the regulations, *United States* v. *Branigan*, 299 F. Supp. 225, 233-36 (S.D.N.Y. 1969) (Weinfeld, *J.*), on the sensible ground that since local and appeal boards have no authority to determine constitutional claims, exhaustion would be a useless formality. Another qualification to the appeal requirement relates to "exceptional and unusual circumstances *underlying the failure to appeal*," *Thompson* v. *United States*, 380 F.2d 86, 88 (10 Cir. 1967) (emphasis added). But that line of cases holds only that neglecting to appeal is not a bar to judicial review of classification if the registrant's failure was justified. Examples are *Donato* v. *United States*, 302 F.2d 468 (9 Cir. 1962) (registrant received notice of classification while away on firefighting duties; by the time he returned the period for appeal had lapsed); *Glover* v. *United States*, 286 F.2d 84 (8 Cir. 1961) (registrant had unsuccessfully appealed a prior classification; when he received his fifth notice of classification, an exact duplicate of the fourth, there was no reason to expect him to go through the process again in the absence of an explanation from the board for the new notice);[11] *Powers* v. *Powers*, 400 F.2d 438 (5 Cir. 1968) (registrant given misinformation by the secretary of the local board regarding right to appeal); *United States* v. *Harris*, 302 F. Supp. 1194 (D. Ore. 1968) (registrant not charged with knowl-

11 The language from the opinion quoted in the dissent must be read in this context.

edge of right to appeal since he had little education and read with difficulty). The "exceptional circumstances" doctrine was recently reaffirmed and perhaps extended in *United States* v. *Davis*, 413 F.2d 148 (4 Cir. 1969), which held that the local board's failure to advise the registrant of the availability of a government appeal agent excused him from exhaustion: "If an Appeal Agent does nothing more than advise a registrant that he may lose his right to contest his classification when he is criminally prosecuted in the district court by failure to administratively appeal, it would seem to be worthwhile." But that cannot avail McGee who had advised the local board in no uncertain terms that he would not read anything they sent him, and would not have appealed no matter what he was told. While McGee's motives for taking this attitude may have been of the highest, they do not excuse his failure to seek the relief which the law afforded him. To countenance this would needlessly multiply the already heavy burden that cases like his are imposing on the courts.

IV.

We therefore affirm McGee's conviction on Count 1 for refusing to submit to induction. Since his claims with respect to Counts 2 and 3 hinge on the alleged impropriety of his I-A classification, we affirm the convictions on these counts also, without any need to consider what the proper result would be if we had held the I-A classification invalid. In light of the concurrent sentences there is no need to consider the conviction under Count 4 under the circumstances here presented.

Affirmed.

FEINBERG, *Circuit Judge* (dissenting):

I respectfully dissent.

The Supreme Court has recently told us that "it is well to remember that use of the exhaustion doctrine in criminal cases can be exceedingly harsh." *McKart* v. *United States*, 395 U.S. 185, 197 (1969). This case shows how harsh that concept can be, particularly when—as here—it is applied unnecessarily. The record shows that there was apparently no basis in fact for denying the conscientious objector claim of Vincent Francis McGee, Jr. (as to this, we all agree), McGee presented his claim in timely fashion to his local draft board, and that body never passed on the merits of the claim. Despite this, the doctrine of exhaustion of remedies, born in the placid area of administrative law, is invoked thereby consigning McGee to jail for two years. That is too "harsh" for me.

As the majority opinion points out, McGee did present his I-O claim in full to his local board in February 1966. Examination of the record compels the conclusion that McGee's local board did not at that or any other time consider his I-O application on the merits. The board refused to consider his initial application for I-O on the ground that he was then a student, and eighteen months later, in September 1967, refused to classify McGee I-O on the ground that his claim had already been rejected.

32 C.F.R. §1623.2 requires that "the registrant shall be classified in the lowest class for which he is determined to be eligible." Since II-S (student deferment) is a lower class than I-O according to the hierarchy set forth in that regulation, it would have been improper for the board to grant McGee a I-O so long as he held a II-S, which he unquestionably did at the time he first presented his I-O claim. Thus it is difficult to understand the majority's

contention that the local board's letter to McGee dated March 23, 1966 was "ambiguous" on whether the I-O claim had been considered on the merits at that time. McGee then held a II-S classification. Under the regulation, therefore, consideration of the merits of McGee's I-O claim would have been a fruitless task for the board since it would in any event have been obliged to leave his II-S status unchanged. The letter itself advised McGee that "your claim as Conscientious Objector will be considered when you no longer qualify for a student classification"—in light of the regulation, that seems a statement of reason which is plain enough for me. And if there were any ambiguity left, the testimony of the board chairman resolves it in favor of the conclusion that in February-March 1966, McGee's I-O claim was not considered on the merits. While the majority correctly points out that the chairman testified that when the application was first filed in 1966, "there weren't sufficient facts . . . to motivate me to grant the registrant the request he sought," and that "what he set forth did not motivate me to grant him the relief he sought," he also testified that he rejected the application "at that time . . . *because the young man was attending college* and in my judgment he rated a 2S qualification which we proceeded to give him." (Emphasis added.) Almost immediately thereafter the following interchange took place:

> Q. I believe you said before that it was because of his beliefs that you failed to grant him a CO?
>
> A. I did not say anything at all about his beliefs. You can refer to the record. I said in my opinion what he set forth did not motivate me to grant him the relief he sought.

Then came the following interchange between the government attorney and the board chairman (Mr. Lande):

Mr. Robinson: Your Honor, I think Mr. Lande has testified that Mr. McGee was a student at that time and therefore they gave him a 2S classification.

The Witness: I did state that.

In light of the regulation, the letter received by McGee, and the board chairman's own testimony, the conclusion seems inescapable that when McGee applied for I-O in 1966 his claim was properly not considered on the merits, but was denied because he held a II-S classification at that time.

The record also indicates quite clearly that when McGee was classified I-A in September 1967, his I-O application was rejected on the ground that it had previously been considered and rejected, notwithstanding the fact that the initial rejection was not on the merits. It is true, as the majority points out, that the trial judge found that the local board "considered the defendant's application for a conscientious objector status and that was considered by the whole board on September 23,*" and also true that the chairman testified that the board "reviewed the record of the young man's case when we gave him the 1A and all pertinent information therein contained." However, he also testified as to the nature of that review:

> The Witness: To the best of my recollection . . . at that time [September 1967] the registrant was no longer in school. *Based on our previous determination that his request for conscientious objection status was denied,* we had no alternative at that time but to give him a 1A, which we did.
>
> Q. You didn't consider the conscientious objector claim again because it had been denied previously?
>
> A. Yes— [Emphasis added.]

* Should be September 19, 1967 (A.42).

Thus it is clear that the basis for denying I-O status in September 1967 was the previous denial in February-March 1966 when the application was first submitted. And, as already noted, the record is even clearer that this initial consideration in February-March 1966 did not deal with the merits of the application or the nature or sincerity of McGee's beliefs, but was based on the fact that he was a student with a II-S classification, who was not, for that reason, eligible for I-O status. At no time did the board pass on the merits of McGee's claim, even though, as the trial judge found, the application was "considered" by the board in September 1967.

The majority takes the position that "the chairman remembered the Board's dissatisfaction with McGee's showing when his application was examined in early 1966 and that the Board saw no reason to change their minds eighteen months later." However, the chairman did not testify concerning such memory. As noted, he did testify: "I did not say anything at all about his beliefs." Such an evaluation of McGee's beliefs was not necessary in February 1966 because McGee was then ineligible for I-O because of his II-S. Moreover, the chairman's testimony made clear that he did not discuss McGee's case with other members of the board in February 1966. In any event, the record establishes that neither the chairman alone nor the entire board ever considered whether McGee's beliefs were those of a sincere conscientious objector to war.

Such a failure to consider McGee's claim on the merits was a clear error by the local board, which one would think requires setting aside an order for induction. The board's failure was not only a blunder, but it also violated a selective service regulation, which commands it "to receive *and consider* all information, pertinent to the classification of a

registrant, presented to it," 32 C.F.R. §1622.1 (emphasis added), and undoubtedly violated the statute as well. E.g., 50 U.S.C. App. 455(a)(1):

> The selection of persons for training and service . . . shall be made in an impartial manner, under such rules and regulations as the President may prescribe . . . .

Yet, we are told that the board's order should not be invalidated because McGee failed to utilize appellate remedies within the Selective Service System. I do not agree that we are required to invoke the doctrine of exhaustion in this case. It is true that *McKart, supra,* contains strong indications, quoted by the majority, that even the limited failure to exhaust present here may sometimes be fatal. But I do not read that case as necessarily and invariably preventing the defense of invalid classification when the registrant did give all the facts to the local board, especially where the record indicates that the local board applied no "expertise" in its ultimate decision and actually did not consider the classification on the merits at all. Compare *McKart, supra,* 395 U.S. at 198 n. 16. The language of *Glover* v. *United States,* 286 F.2d 84, 90-91 (8th Cir. 1961), may appropriately be applied to McGee's I-O claim:

> We adhere to the general rule as to the necessity for exhaustion of administrative remedies in order to obtain a judicial review, and are of the opinion that such rule is generally applicable and usually necessary. However, we are of the view that such general rule is not absolute, inflexible and without exception, but that it is to be relaxed only under extremely exceptional and unusual circumstances. The factual situa-

tion presented in this case is appropriate for and requires the relaxation of such rule.

Cf. *Wolff* v. *Selective Service Local Board No. 16*, 372 F.2d 817, 825 (2d Cir. 1967).

The facts as to McGee's I-O claim are sufficiently unusual to allow us properly to depart from the exhaustion doctrine: McGee presented a strong case for a I-O classification; his local board did not require a personal interview as a prerequisite for processing such a claim; McGee's file contains no information reasonably contradicting his claim; the board chairman inaccurately thought that a letter in support of McGee advised the board that McGee would not accept a I-O; and when the board did "consider" the application, it dismissed it on the inaccurate assumption that the claim had already been rejected on the merits.

Finally, and perhaps most important, the failure of the local board to consider McGee's claim on the merits could not have been called to the attention of an appeal board because McGee could not know about that error and nothing in the record would disclose it. It is true that the appeal board might have reversed the denial of a I-O classification to McGee simply because it thought that he had made out a sufficient case. But that should not be dispositive in deciding whether to apply the exhaustion doctrine here. The appeal board might also have regarded the case, on the record as then known, as a close one which could go either way on the facts. Accordingly, even though review by the appeal board is *de novo*, the balance might have been tipped either way by a desire not to set aside the action of a local board. In such a case, a fair determination of the claim on the merits by the local board would be crucial. And, of course, that is precisely what McGee did

not get. In *Knox* v. *United States*, 200 F.2d 398, 402 (9th Cir. 1952), the Ninth Circuit met the argument that a *de novo* review by an appeal board cured the failure of the local board to consider evidence supporting a claim of conscientious objection. The court rejected that contention as follows:

> Classification by the local board is an indispensable step in the process of induction. The registrant is entitled to have his claims considered and acted upon by these local bodies the membership of which is composed of residents of his own community. An underlying concept of the Selective Service System is that those subject to call for service in the armed forces are to be classified by their neighbors—people who are in a position to know best their backgrounds, their situation and activities.

This language in *Knox* has been cited with approval by the Ninth Circuit, most recently in *Welsh* v. *United States*, 404 F.2d 1078, 1083 (9th Cir. 1968), cert. granted, 396 U.S. 816 (1969), as well as by our own, *Mintz* v. *Howlett*, 207 F.2d 758, 762 (2d Cir. 1953), although we distinguished the latter case in *United States* v. *Corliss*, 280 F.2d 808, 816-18 (2d Cir.), cert. denied, 364 U.S. 884 (1960) (claim of procedural unfairness but not failure to consider on merits).

It is true that there are compelling reasons behind the exhaustion doctrine, and I do not suggest that the requirement be cast aside when the registrant ignores the local board altogether and gives it no facts at all. Nor is it necessary in this case to resolve the issue whether failure to appeal denial of a I-O claim should generally

be fatal at a subsequent criminal trial to the defense of invalidity of a I-A classification, a question which has recently split the Ninth Circuit, *Lockhart* v. *United States*, —— F.2d ——, 2 S.S.L.R. 3432 (9th Cir. 1969) (*in banc*) (8-2); cf. *United States* v. *Palmer*, 223 F.2d 893 (3d Cir.) (*in banc*) (4-3), cert. denied, 350 U.S. 873 (1955). I would hold only that the exhaustion doctrine need not be inexorably applied when the basic error of the local board could not be disclosed by the appeal, and should not be invoked when the registrant did give all of the pertinent information to the local board and it never passed upon the merits at all. On this record, McGee's failure to appeal from the board's I-A classification should not be fatal, and the exhaustion doctrine should not be applied to McGee. I would hold that he should have been classified I-O, and would set aside the conviction on Count 1.

The majority opinion had no occasion to consider the convictions on Counts 2 and 3, and did not find it necessary to deal with Count 4. However, since I would reverse the conviction on Count 1, it does seem necessary for me to consider the other counts, albeit very briefly.

Count 2 charged McGee with failing to report for his pre-induction physical examination in October 1967, after he had been reclassified I-A. It is undisputed that McGee did not report. However, he argues that had he received the I-O classification to which he was entitled, his failure to report could not constitute a crime. This contention is essentially correct. The Order to Report (SSS Form 223) which was sent to McGee by his local board quite clearly indicates to a I-O registrant that failure to report for a physical examination would not subject him to fine and imprisonment, as it would I-A and I-A-O registrants, and indeed would have no effect

at all on his obligation to perform civilian work.[1] Under those circumstances, the notice to a I-O registrant to report for a physical examination is for his benefit and is not a "duty required of him" under 50 U.S.C. App. §462 (a). See *United States* v. *Mendoza*, 295 F. Supp. 673, 683 (E.D.N.Y. 1969); *United States* v. *Walsh*, 279 F. Supp. 115, 118-19 (D. Mass. 1968). Cf. *Shoemaker* v. *United States*, 413 F.2d 274, 275 (9th Cir.), cert. denied, 396 U.S. 837 (1969). It is true that *McKart*, *supra*, 395 U.S. at 203, contains dicta suggesting that an invalid classification "would not be a defense today to a prosecution for failure to report for a pre-induction examination." However, *McKart* did not deal with the wrongful denial of a

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1 The Order to Report (SSS Form 223) states:

> TO CLASS I-O REGISTRANTS:
>
> This examination is given for the purpose of determining whether you are qualified for military service. If you are found qualified, you will be available, in lieu of induction, to be ordered to perform civilian work contributing to the maintenance of the national health, safety or interest. If you fail to report for or to submit to this examination, you will be subject to be ordered to perform civilian work in the same manner as if you had taken the examination and had been found qualified for military service.

There is a sharp distinction in the advice the Form gives to a Class I-A and I-A-O registrant; he is told that:

> If you fail to report for examination as directed, you may be declared delinquent and ordered to report for induction into the Armed Forces. You will also be subject to fine and imprisonment under the provisions of the Universal Military Training and Service Act, as amended.

See also Local Board Memorandum No. 14, reported in S.S.L.R. 2160 (1969), which provides:

> 3. Action by Local Board Subsequent to Refusal of Its Own Registrants to Submit to Armed Forces Examination. . . .
>
> (b) If the registrant is in Class I-O, consider him for all purposes as if he had been physically and mentally examined and found acceptable for military service and process him thereafter in the same manner as any other registrant in Class I-O who has been found acceptable for service after being given an armed forces physical examination. . . .

I-O classification, and thus did not consider the option to waive a physical examination which is afforded to registrants holding such a classification. McGee should not be penalized because of the board's error, or deprived of the benefit of selective service procedures designed for conscientious objectors. Therefore, McGee's conviction on Count 2 should also be set aside.

Having thus concluded that because McGee was improperly denied classification as a conscientious objector he should have been acquitted on Counts 1 and 2 of the indictment, there remains a grave issue as to the proper treatment of his convictions on the remaining two counts. These charged that McGee knowingly failed to have in his personal possession a valid Notice of Classification (Count 3) and failed to submit information requested by his local board (Count 4). Appellant also attacks his conviction on these counts, but his arguments—particularly as to Count 3—are not very persuasive.

My problem is of a different sort. Having found error in Counts 1 and 2, I am left with the uneasy feeling that the case might have turned out differently if only Counts 3 and 4 had been involved. All of McGee's offenses grew out of the same operative fact: his policy of non-cooperation with his draft board starting in April 1967. Yet because of his earlier request, he was entitled to be classified I-O. If he had been so classified in September 1967—when he should have been—there is at least doubt that he would have become involved with the criminal law at all. It is true that he then would have been liable for civilian alternate service and presumably would have been ordered to report for it; we simply do not know whether, despite earlier contrary indications,[2] he would have obeyed such an order, which would have recognized the sincerity of

2 *Cf.* majority opinion, note 8.

his convictions. If he had, it is difficult to believe that prosecution on Counts 3 and 4 would have followed.[3] And, in any event, there is a substantial question whether the jury or the judge would have reacted differently to prosecution of a conscientious objector on Counts 3 and 4. Although the trial judge certainly acted within his authority when he sentenced McGee to concurrent two year terms, he might well have given McGee a shorter prison sentence, or even probation, had he known that McGee should have been classified as a conscientious objector and could not be convicted on Counts 1 and 2. I am aware that it is only

> on rare occasion that we have set aside a conviction on otherwise presumably "good" counts because of defects in the conviction of a defendant on "bad" counts.

United States ex rel. Weems v. *Follette*, 414 F.2d 417 (2d Cir. 1969); cf. *United States* v. *Bottone*, 365 F.2d 389, 394 (2d Cir.), cert. denied, 385 U.S. 974 (1966). This case is an appropriate instance for exercising such discretion. See *United States* v. *Barash*, 365 F.2d 395, 403 (2d Cir. 1966); *United States* v. *Hines*, 256 F.2d 561, 563 (2d Cir. 1958). Doing so would not only eliminate any doubt that McGee was prejudiced on Counts 3 and 4 by the invalid convictions on Counts 1 and 2, it would also afford the Government an opportunity to consider whether it still wishes to press the prosecution on Counts 3 and 4 against this conscientious objector and divinity student.

Accordingly, I would reverse the convictions on Counts 1 and 2 and direct a judgment of acquittal, and reverse the convictions on Counts 3 and 4 for further proceedings consistent with this dissenting opinion.

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3 Indeed, the Selective Service authorities in this case did not recommend prosecution on Count 4, even though McGee refused to obey the induction order. Gov't Exs. 39, 40.

Judgment

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the thirty-first day of March one thousand nine hundred and seventy.

Present:

HON. HENRY J. FRIENDLY,
HON. J. JOSEPH SMITH,
HON. WILFRED FEINBERG,
Circuit Judges.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

—v.—

VINCENT FRANCIS MCGEE, JR.,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. Daniel Fusaro
Clerk

A true copy,

A. Daniel Fusaro
Clerk

By: Vincent A. Carlin
Chief Deputy Clerk

Order Denying Rehearing

33568

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

VINCENT FRANCIS McGEE, JR.,

Defendant-Appellant.

A petition for a rehearing having been filed herein by counsel for the appellant,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

HENRY J. FRIENDLY
J. JOSEPH SMITH

I dissent— WILFRED FEINBERG
U.S. Circuit Judges

May 7, 1970.

A true copy,

A. DANIEL FUSARO
Clerk

By: VINCENT A. CARLIN
Chief Deputy Clerk

Rehearing In Banc

33568

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—v.—

VINCENT FRANCIS McGEE, JR.,

Defendant-Appellant.

A petition for a rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the appellant and no active circuit judge having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

/s/ J. EDWARD LUMBARD
Chief Judge

May 7, 1970

A true copy,

A. DANIEL FUSARO
Clerk

By: VINCENT A. CARLIN
Chief Deputy Clerk

Order of the Supreme Court Granting Certiorari, Filed October 19, 1970

[See Opposite]

Supreme Court of the United States

Supreme Court of the United States

No. 362 ----, *October Term, 19* 70

Vincent Francis McGee, Jr.,

Petitioner,

v.

United States

ORDER ALLOWING CERTIORARI. Filed October 19, 1970.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

A true copy E. ROBERT SEAVER
Test: